

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

74-1901

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P/S

**United States Court of Appeals
FOR THE SECOND CIRCUIT**

Docket No. 74-1901

UNITED STATES OF AMERICA,

Appellee,

—v.—

KARL SCHWARTZBAUM,

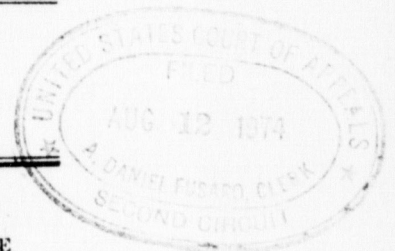
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLANT'S APPENDIX

Volume II—Pages Tr. 166-Tr. 476

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Glasser - cross

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Q Did they ask you at that meeting, that second meeting you had with your superiors, whether or not you had ever paid any money to any union official?

A They did.

Q What was your answer?

A I had denied having any dealings with any union official.

Q That is two denials we have so far, isn't it?

A That's correct.

Q Any more?

A Not that I know of.

Q Do you know a Detective Civitano?

A I sure do know him.

Q Did he interview you in 1972?

A He did.

Q Did he question you?

A Yes. He called me down voluntarily --

Q Please, please, I asked you whether he questioned you.

A Yes, he did.

Q Among the questions did he ask you whether or not you had paid any money to union officials?

A Yes, he did.

Q Did you deny it?

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Glasser - cross

167

A I did.

Q So that's a third denial we have now?

A That's correct.

Q Did he also ask you whether or not you had received any money from any fur manufacturers?

A He did.

Q Did you deny it?

A I certainly did.

Q So now we have three denials?

A That is correct.

Q Does that kind of refresh your recollection?

A About denials?

Q Yes.

A Yes, it does.

Q Any more denials that you can think of?

A No, that's it.

Q That's it?

A Yes.

Q You are certain about that?

A I think so.

Q Were you ever questioned by Mr. Hinckley?

A Yes.

Q Did he ask you whether or not you had received money from fur manufacturers?

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lhk

Glasser - cross

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A Oh, he named them.

Q Did he ask you --

A Yes, he did.

Q -- whether or not you had received money from fur manufacturers?

A Yes.

Q What did you say, did you admit it or deny it?

A I denied it at first.

Q So that's four denials we have now?

A That is correct.

Q Not one, four?

A Four denials.

Q He asked you whether or not you gave any money to any union officials?

A And that was denied.

Q And you denied that too?

A Yes, sir.

Q All of those denials were lies, were they not?

A Yes, sir.

Q You testified, have you not -- are you feeling all right, Mr. Glasser?

A Yes, yes, I am.

Q You testified that under the collective bargaining agreement, contracting is prohibited?

1

2

A That is correct.

3

Q And jobbing is prohibited, unless under certain

4

circumstances?

5

A That is correct.

6

Q It is not a crime to give out contracting, is it?

7

A Under the contract, it is.

8

Q No, it is not a crime? It is a violation of the

9

collective agreement, isn't it? Is it a crime, a criminal

10

act?

11

A I am not a lawyer --

12

MR. FRYMAN: Objection.

13

THE COURT: Sustained.

14

Q If the manufacturer is caught by the union con-

15

tracting without permission or giving out jobbing without

16

permission, then he can be suspended or fined or appropriate

17

action taken, is that right?

18

A That is right.

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Q Isn't it a fact, Mr. Glasser, that contracting was widespread in the industry?

A For many years.

Q For many years?

A Yes.

Q Widespread?

A Widespread.

Q What happened was that the manufacturers took their chances on getting caught, is that right?

A Some of them did.

MR. FRYMAN: Objection.

Q And if they get caught, then they were fined by the union?

A That's right.

Q Would you say fifty percent, seventy percent of the manufacturers did give out contracting illegally?

A You are asking for my best guess?

Q Not a guess. Your best estimate.

A My best estimate. I would say --

MR. FRYMAN: Objection.

MR. ESBITT: I am sorry, your Honor. I didn't hear the response to the objection. --

THE COURT: Overruled.

A My --

1 Q Can you give us a reasonable estimate from your
2 experience?
3

4 A A reasonable estimate, almost one hundred
5 percent at one time or another give out contracts.

6 Q During the 34 years that you were with the
7 Association or most of the 34 years, would you say?

8 A I would say.

9 Q Now, Mr. Schwartzbaum was one of those who gave
10 out contracting, didn't he?

11 A That's what he said, yes.

12 Q Well, you know that as a fact, don't you?

13 A As a fact?

14 Q Yes.

15 A I don't know that as a fact. I don't know
16 who he gave it out to. No, I don't know it as a fact.

17 Q Well, the union struck his shop in May of 1969,
18 did it not?

19 A Not for contracting.

20 Q What did they strike him for in May of 1969?

21 A For jobbing.

22 Q And you were his representative at that time?

23 A That's correct.

24 Q And, of course, you went to that place of
25 business at the time?

1 lzv 3 Glasser-cross

2 A No, I did not.

3 Q You didn't go -- were you away on vacation or
4 not?

5 A No, I was there.

6 Q But you weren't called in?

7 A I was not called in. It was a thing that was
8 general. They didn't pick out Mr. Schwartzbaum but a dozen
9 or two firms that were jobbing and they pulled down the
10 shops.

11 Q And that was in May of 1969?

12 A It was in the spring. I don't have the precise
13 date. In the spring.

14 Q And so, his shop was struck for violation of
15 the collective agreement, right?

16 A No, it was not struck for a violation of the
17 collective agreement.

18 Q What was it struck for?

19 A It was struck by the union for whatever reason
20 they struck him and they at that time said it was for
21 jobbing.

22 Q Was it customary for the union to strike a
23 shop without a reason granted by the collective agreement?

24 A They have done that more times than I can
25 remember.

1 lzv 4

Glasser-cross

2 Q So this was an illegal strike or a legal strike?

3 A It could have been an illegal strike.

4 Q Now, this was in the spring of 1969. Did Mr.
5 Shewartzbaum complain to you when his shop was struck about
6 the fact that his shop was struck?

7 A He didn't complain to me. He complained to
8 Mr. Hecht.

9 Q That was your superior?

10 A That's correct.

11 Q But no complaint to you?

12 A Me personally? No. He came up to the office
13 to complain to Mr. Hecht.

14 Q Well, I think your testimony is that he had been
15 paying protection through you?

16 A He hadn't paid any protection that year. No
17 payment had been made.

18 Q But he made payments in '68?

19 A That had nothing to do with 1969.

20 Q Do you mean he paid -- you say he paid for
21 protection and he made a payment to you three times in 1968.
22 The last payment was in December of 1968, and he was struck
23 by the shop and didn't go to you to complain?

24 A No, sir.

25 Q And your reasoning is that he hadn't paid for

protection in 1969?

MR. FRYMAN: I object to the form of the question.

THE COURT: As to form, sustained.

MR. ESBITT: Sir?

THE COURT: Sustained as to form.

Q Well, he didn't complain to you, that's true.

A No, he did not.

Q No complaint to you whatsoever?

A To me personally, no.

Q Well, he had been paying the money to you, hadn't he?

A He did not complain to me personally. He went up to the office and spoke to Mr. Hecht.

Q Do you know, did he tell Mr. Hecht that he had been paying money to you?

A No, he did not.

Q Now, it is your testimony that he had been paying you for protection in 1969?

A Yes, sir.

Q And possibly in the spring of 1970?

A Possibly. Possibly.

Q And you left in August of 1970? Or September?

A The last time I did any actual work was the

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lzv 6

Glasser-cross

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last week in July of 1970.

Q You know, do you not, that the -- there was a complaint filed against Schwartzbaum Company by the union in September the 18th of 1970 for giving out work to non-union contractors?

A Your question is do I know about it?

Q Yes.

A I know nothing about it. I was no longer employed.

Q You know about it now?

A You are mentioning it. If it so happened -- I know nothing about it.

Q Well, now you know that he was charged by the union for giving out contracting work in September of 1970?

A I do not know that.

MR. FRYMAN: Objection, your Honor.

THE COURT: Objection sustained.

MR. ESBITT: Would you mark this for identification, please?

(Defendant's Exhibit H, marked for identification.)

Q You are familiar with the forms used in the industry, are you not?

A I am.

1 lzv 7

Glasser-cross

2 Q I show you Defendant's Exhibit H for identifi-
3 cation and ask you whether you can recognize that?

4 A I recognize it as an official Association and
5 Union complaint, yes.

6 Q What is the complaint for?

7 A It states here, "Firm gives out work to" and
8 then there is a name, 231 West 29th Street.

9 Q And then Schwartzbaum?

10 A The firm name is Schwartzbaum.

11 Q And I show you Defendant's Exhibit E in
12 evidence and ask you to look at it and see if you recognize
13 that.

14 A Yes.

15 Q And that indicates, does it not, that Schwartz-
16 baum was fined by the Impartial Chairman in the amount of
17 \$3,500?

18 A That's what it states there.

19 Q That's what it states. And that was in September
20 of 1970?

21 A I was no longer connected with the trade then.

22 Q I understand that. Were you in New York?

23 A Was I in New York?

24 Q Yes.

25 A Oh, sure, I was in New York.

1
2 Q After this happened to Mr. Schwartzbaum,
3 being caught by the union for giving out contracting,
4 did he communicate with you?

5 A Did Mr. Schwartzbaum communicate with me?

6 Q Yes.

7 A No, sir.

8 Q After getting hit by the union with a potential
9 fine of \$3,500, he never contacted you and complained about
10 the fact, as you testified, that he had been giving you
11 money for the last few years and where is the protection?

12 A I was no longer in the trade --

13 Q I didn't ask you that.

14 You were out of the trade, you were back, in
15 your home, is that right?

16 A Mr. Schwartzbaum never communicated with me.

17 Q Never complained to you?

18 A Never complained to me.

19 Q For the protection that you allegedly had
20 been giving him or getting for him?

21 A I had no protection for Mr. Schwartzbaum in
22 1970.

23 Q Well, you testified that you might have -- he
24 might have paid you money in 1970.

25 A It is possible but I say I have no recollection

of it happening.

Q To your knowledge, Mr. Glasser, did Mr. Hoff know Mr. Glasser personally?

A Did Mr. Hoff know me?

Q Of course he knew you. Did he know Mr. Schwartzbaum?

A Personally? I believe he did. I believe so. I couldn't be sure.

Q You are not sure?

A No, I'm not.

Q Had he ever been, to your knowledge, had Mr. Hoff ever been to your knowledge at his place of business?

A To my best knowledge, the answer is no.

Q Never?

A Never. I wouldn't know that but I don't know -- I never saw him there.

Q You testified, did you not, that Mr. Jaffe was a business agent for Mr. Schwartzbaum?

A For a period of time.

Q At the time -- concerning the time you were testifying?

A Around '68 and '69, yes.

Q '68 and '69?

A Yes.

1 lzv 10

Glasser-cross

2 Q And I think you testified that you gave Mr. Jaffe
3 \$100?

4 A Mr. Jaffe received several payments. I couldn't
5 be precise. \$100, maybe another \$100. He received a few
6 payments from the firm.

7 Q A few payments?

8 A A few. It could have been one or two or three.

9 Q Have you any recollection --

10 A I have no recollection.

11 Q None at all?

12 A None whatsoever.

13 Q But you did testify to this one payment?

14 A At least one.

15 Q At least one?

16 A Yes.

17 Q And that was \$100?

18 A \$100.

19 Q And that was money which you say you received
20 from Mr. Schwartzbaum?

21 A Yes, I did.

22 Q Did you take a cut of that payment?

23 A No.

24 Q Well, you have testified to 41 payments and you
25 testified that in every one of those 41 payments, you took a

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Glasser-cross

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cut, but you didn't take a cut on this one \$100 payment?

A No, sir.

Q You did not?

A Not a penny out of it.

Q Now, you were interviewed by Mr. Hinckley,
were you not?

A Yes.

Q Before you testified before the grand jury?

A Yes, sir.

Q And didn't you tell Mr. Hinckley that the first
payment that you ever received from Mr. Schwartzbaum, your
testimony, was \$300?

A That's correct.

Q And that's in the spring of 1968?

A That's correct.

Q And you divided that payment between yourself,
Mr. Jaffe and Mr. Hoff?

A That would be the one time, the first time.

Q Is that your testimony?

A Yes.

Q Was it the truth?

A Yes.

Q You told it to Mr. Hinckley?

A Yes.

1zv 12

Glasser-cross

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Q And you so testified before the grand jury?

A I don't recall. I don't recall what I did before the grand jury.

Q No recollection whatsoever?

A None whatsoever. This is a few years ago.

Q Well, let me see if we can refresh your recollection.

Reading from page 16 of the grand jury testimony.
Question by Mr. Hinckley on line 7:

"Q And the first payment was split, \$300, \$100 for yourself, \$100 for Jaffe and \$100 for Hoff?

"A That's correct.

"Q And after that it was split just between yourself and Mr. Hoff?

"A Between myself and Mr. Hoff."

Were you asked those questions and did you give those answers?

A Yes.

Q No change in that testimony?

A No change.

Q Was that the truth?

A It was.

Q Now, you were interviewed by Mr. Sabetta and by Mr. Fryman in preparation for this trial, were you not?

1 1zv Glasser-cross

2 A Yes, sir.

3 Q Did you tell them that you had recieved a --
4 that you had given Mr. Jaffe \$100 back in -- as a split in
5 the first payment?

6 A I don't recall what I told them. I was giving
7 them my best recollection of events that are long past gone
8 and I don't recall just what I told them.

9 Q Well, did they refresh your recollection with
10 your grand jury testimony?

11 A I don't recall that they refreshed my memory
12 with anything.

13 Q Now, you testified on this trial yesterday
14 that the first time you had this meeting with Mr. Schwart-
15 baum was in the spring of 1968?

16 A That's correct.

17 Q Was that correct?

18 A Yes, sir.

19 Q And you testified, did you not, that he told
20 you that he was importing and contracting?

21 A That's correct, sir.

22 Q He included the word "contracting"?

23 A Yes, he did.

24 Q You testified to that yesterday?

25 A Yes.

2

Q Was it the truth?

3

A Yes, it was the truth.

4

Q And you so testified the same way on this trial two months ago?

5

6

A I believe so.

7

Q Were you asked this question two months ago in this trial and did you give this answer. The question from page 184, question by Mr. Sabetta:

8

9

"Q Tell us what conversation, if any, between the two of you took place?"

10

11

This refers to 1968, the first meeting.

12

13

"A Mr. Schwartzbaum called me to come up to see him and I did. In his private office we had a discussion. He indicated to me that he was importing furs from union and non-union sources in Canada. Under the terms of the collective agreement that was prohibited. He was jobbing or importing from Canada. He said to me, 'I would like to do this without having any headaches with the union, can anything be done,' and I said I will let you know and thereafter I let him know."

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Were you asked that question and did you give that answer?

23

24

A Yes, I did.

25

Q And in the first trial did you say a single word

word about Mr. Schwartzbaum discussing with you contracting in that first meeting?

A I don't recall what I said at the first trial.

Q You don't recall what you said?

A No, sir.

Q But you testified yesterday that in your first meeting with Mr. Schwartzbaum, he said to you, what can be done about contracting and importing from Canada?

A That's my best recollection of that event.

Q But you didn't testify to that at the first trial two months ago, did you?

A I don't know what I testified to at the first trial.

Q Let me see if we can refresh your recollection. Does the government have a clean copy of the testimony? Pages 183, 184?

MR. ESBITT: If your Honor please, I -- well, you better mark this for identification, I suppose.

Your Honor, I would like to have marked for identification pages 183, 184, 185, 186, 187, 188, 189, 190 and down through line 16 of page 191.

(Defendant's Exhibit I, marked for identification.)

Q Now, it is your testimony today that you cannot

1 lzv 16

Glasser-cross

2 recall what you testified before Judge Pierce and a jury
3 two months ago?

4 A No, I cannot recall.

5 Q You cannot?

6 A No.

7 Q All right, I will ask you to look at pages
8 186 through line 16 of 191 which relates to your testimony
9 in the prior trial before Judge Pierce under oath, and ask
10 you to please read it.

11 A "Did you have contact with a firm named "--

12 Q Don't read it out loud.

13 A You said read it.

14 Q I apologize. Just read it to yourself.

15 A What was the last page?

16 THE COURT: Line 16 of 191.

17 A Yes, I read it.

18 Q Does that refresh your recollection as to what
19 you testified to two months ago?

20 A Yes, it does.

21 Q Did you testify before the grand jury and Judge
22 Pierce two months ago that in your first conversation with
23 Mr. Schwartzbaum you said a single word about contracting?

24 A I must have just left it out. It must have
25 slipped my memory.

Q Conveniently?

A Not conveniently.

MR. FRYMAN: Objection.

THE COURT: Sustained.

MR. FRYMAN: Move to strike that comment.

THE COURT: Strike it.

Q Was there anything else that has slipped your memory besides that, Mr. Glasser?

MR. FRYMAN: Objection.

THE COURT: Overruled.

A I wouldn't know. I tried to do the best, to recollect events and everything I have testified to is from my best recollection of events that took place.

Q And if the facts are otherwise, then your recollection is in error, is that right?

A It would be.

Q Of course.

Now, when you went to see Mr. Hoff, you say you saw him after you saw Mr. Schwartzbaum in the spring of 1968?

A That's correct.

Q Right?

A Yes, sir.

Q Did you discuss Schwartzbaum giving out contracting with Mr. Hoff?

1zv 18

Glasser-cross

1
2 A I cannot recall that, sir.

3 Q You cannot recall?

4 A No, sir.

5 Q But what did you testify yesterday? Did you recall
6 it yesterday or did you not?

7 A I cannot recall that I ever spoke to Mr. Hoff
8 with contracting or that I didn't speak to him about it.
9 These are events that took place five years or more ago.

10 Q You testified yesterday under oath, did you not?

11 A I did.

12 Q Were you interviewed by Mr. Sabetta and Mr.
13 Fryman last week?

14 A Last week?

15 Q Yes.

16 A Yes. Yes.

17 Q And did you tell -- who interviewed you, Mr.
18 Sabetta or Mr. Fryman?

19 A I think Mr. Fryman and Mr. Sabetta.

20 Q And did you tell them last week that you had
21 discussed contracting or that Schwartzbaum had discussed
22 contracting with you?

23 A I believe I did tell it to them.

24 Q You did?

25 A Yes.

1 lzv 18a

Glasser-cross

2 Q Did you tell them that you had discussed
3 contracting with Mr. Hoff?

4 A I don't think that ever was brought up. I
5 don't recall th at question being brought up.

Q What is your recollection as to your testimony yesterday about Mr. Hoff? Did you tell Mr. Hoff about contracting or not?

A I don't recall that I did or I didn't.

Q You cannot recall today what you testified to yesterday?

A I cannot recall that, sir. I don't know if I was asked that question. *lf 63*

Q Let's read from the record. Page 63 of the record, line 12. Mr. Fryman asked you the following question and you gave the following answer, at least I want you to verify it:

"Q What did you say to Mr. Hoff?

"A I told Mr. Hoff what the firm was requesting. I told him that the firm would like the privilege of jobbing from union and non-union sources and giving out contracting. That is the excess work that he has that his shop couldn't produce."

Were you asked that question and did you give that answer?

A Yes, I did.

Q Now you recall?

A Yes, I do.

Q Was it the truth?

A Yes, it was the truth.

2 Q You were interviewed by Mr. Sabetta and Mr. Fryman
3 before the first trial, were you not?

4 A Before the first trial?

5 Q Yes.

6 A I believe so, yes.

7 Q How many times?

8 A I can't be specific as to how many times. I
9 don't know.

10 Q Did you tell Mr. Sabetta or Mr. Fryman when they
11 were interviewing you in preparation for the first -- the
12 earlier trial, not of this defendant, two months ago, did
13 you tell Mr. Sabetta -- he was taking notes, wasn't he?

14 A I don't recall if he was taking notes at all.

15 Q You don't think so?

16 A I don't know.

17 Q Did you tell Mr. Sabetta or Mr. Fryman or either
18 one of them that in your conversation with Mr. Schwartzbaum
19 he said -- mentioned the word contracting?

20 A I couldn't recall what took place two months ago
21 or whether I did or did not talk to him.

22 Q I want to show you Exhibit GX 3508A, which has
23 been represented to me to be Mr. Sabetta's notes taken of
24 his interview with this witness prior to that earlier trial.
25 I call your attention, Mr. Glasser, to the bottom of page 3

2 and the top of page 4 which apparently covers Mr. Schwartz-
3 baum. I ask you to read that, and then I will ask you a
4 question or two.

5 (Pause.)

6 A Yes, sir.

7 Q You read it?

8 A Yes.

9 Q Does that refresh your recollection that you never
10 mentioned to Mr. Sabetta in preparation for the earlier trial
11 that Mr. Schwartzbaum had ever said anything about con-
12 tracting?

13 A Well, if it is not there, I didn't mention it to
14 him, and it slipped my mind.

15 Q That slipped your mind also?

16 A Yes.

17 Q Is there anything in that memo of Mr. Sabetta
18 which indicates whether or not you told Mr. Sabetta that
19 in your discussion with Mr. Hoff that day or two after the
20 first meeting you had discussed contracting with Mr. Hoff?

21 A There is nothing --

22 MR. FRYMAN: Objection.

23 THE COURT: Read the question. --

24 (Question read.)

25 MR. ESBITT: It is the same question as the pre-

2 ceding one, your Honor.

3 THE COURT: Overruled.

4 A No, there is nothing in this here to indicate that
5 I mentioned contracting.

6 Q So your best recollection now is that you did not
7 tell Mr. Sabetta anything about any conversation with Mr. .
8 Hoff or with Mr. Schwartzbaum with respect to contracting?

9 A I wouldn't know. If I did not mention it, it
10 slipped my mind.

11 Q Or perhaps it didn't happen?

12 A No, it did happen.

13 Q It did happen?

14 A Yes.

15 Q But it slipped your mind in telling Mr. Sabetta
16 when he was interviewing you, you forgot to tell him about
17 it?

18 A That is correct.

19 Q And you forgot to tell the jury and Judge Pierce?
20 You didn't mention it at the prior trial, you saw that,
21 did you not?

22 A That is correct.

23 Q It slipped your mind at the prior trial? ..

24 A Yes, sir.

25 Q Mr. Glasser, you testified yesterday that you
actually told Mr. Schwartzbaum the name of the union official

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who gave the okay.

A I don't know if I did tell it to him. I don't know.

Q What's your recollection today?

A As I said, all of my testimony is my best recollection of events that took place from five, six years ago, and I am giving you my best recollection of these events. That's the best I can do.

Q In giving us your best recollection, you could be wrong in many respects, is that correct?

A I could be mistaken.

Q Mistaken, you prefer that? Yes, you could be mistaken?

A Yes.

Q In many respects?

A In some respects.

Q Let's find out about this respect: Did you ever testify at any time, under oath, that you told Mr. Schwartzbaum the name of the union official?

A I don't know if I did. I cannot recall that I testified to it or that I didn't.

Q And today you are not even sure as to whether or not you had ever mentioned him?

A To Mr. Schwartzbaum specifically, Mr. Hoff?

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Glasser - cross

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Q Yes.

A No, I am not sure that I did.

Q And it could be that you didn't tell it to him?

A Possibly that I didn't tell it to him, that it was
Mr. Hoff, yes.

Q You didn't tell the grand jury that you had told Mr.
Schwartzbaum the name of the union official, did you?

A I don't believe I did.

Q And you didn't testify in the trial two months
ago that you told Mr. Schwartzbaum the name of the union
official?

A I don't believe I did.

Q You have made a lot of notes, haven't you, in
preparation for your grand jury testimony, the prior trial
and this trial, did you not?

A These notes were made after I testified before the
grand jury.

Q After you testified?

A Yes.

Q Are the notes accurate?

A As best as my memory can give them, yes.

Q We have established that you did not tell the
grand jury that you ever told Mr. Schwartzbaum the name of
the union official. Now would you please look through your

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2 notes, all of them, and tell us whether in your notes you
3 made a single reference to having told Mr. Schwartzbaum the
4 name of the union official?

5 A No, that would not appear in my notes, that I
6 specifically told Mr. Schwartzbaum the name of the union
7 official.

8 Q So it didn't appear in your notes, it didn't appear
9 in the grand jury testimony, Did you tell Mr. Hinckley about
10 it?

11 A No. Not that I recall that I specifically --

12 Q You didn't tell Mr. Hinckley?

13 A No.

14 Q In preparation for this trial did you tell Mr.
15 Sabetta or Mr. Fryman about it?

16 A That I was -- who I was paying the money to?

17 Q No. You have testified who you were paying the
18 money to, you say.

19 A Yes.

20 Q But we are trying to find out whether you had
21 ever told Mr. Schwartzbaum the name of the union official.

22 A I was never asked that question.

23 Q I didn't ask you that. I asked you whether you
24 had ever told. Did you ever tell Mr. Sabetta or Mr.
25 Fryman that you told him the name of the official?

2 A No, I did not.

3 Q Or that you did not?

4 A No, I did not.

5 Q You did not?

6 A Did not.

7 Q You never told Mr. Sabetta or Mr. Fryman that you
8 had told him the name of the official?

9 A No, I did not.

10 Q You say that under oath?

11 A Yes.

12 Q You also didn't tell the other manufacturers the
13 name of the union official, did you?

14 A Some of them knew.

15 Q I didn't ask you if they knew. I asked you
16 whether you told them. Isn't it a fact that you didn't
17 tell a single manufacturer the name of any union official
18 that you gave money to?

19 A No, it is not a fact.

20 Q Did you ever testify to it anywhere?

21 A I testified that Daniel Furs knew --

22 Q I'm sorry, now, please, Mr. Glasser, I am not
23 asking you what they knew or what they didn't know. We are
24 trying to find out what you told people. Did you ever
25 testify at any time under oath that you had told any

2 manufacturer the name of any union official?

3 A I don't recall that I ever was asked that ques-
4 tion.

5 Q Did you ever testify --

6 A I don't recall that.

7 Q You were interviewed by a lot of people, you were
8 interviewed first by Mr. Hinckley, were you not?

9 A Yes.

10 Q Did you tell Mr. Hinckley at any time that you
11 had told any manufacturer the name of the union officials
12 you were dealing with?

13 A I can't recall telling him that I did tell them.

14 Q Would you like to look at his notes?

15 A No.

16 Q So you have no recollection that you didn't tell
17 him? You have no recollection you ever told him?

18 A I don't think I told him.

19 Q And you testified before the grand jury and you
20 didn't tell the grand jury either?

21 A I don't believe I did.

22 Q Before you testified at the trial you were inter-
23 viewed by Mr. Sabetta and Mr. Fryman, is that right?

24 A Yes, sir.

25 Q And you didn't tell them either, did you?

2 A I don't believe I ever was asked that question.

3 Q If you were never asked, you didn't volunteer the
4 answer?

5 A No, I did not.

6 Q You didn't testify to it at the prior trial?

7 A I don't believe I ever was asked that question.

8 Q And you were interviewed last week?

9 A Yes.

10 Q This past week?

11 A Yes.

12 Q Did you tell him at that time?

13 A I was never asked that question.

14 Q And you never volunteered the ansewr?

15 A Never volunteered it. I never thought about it.

16 Q You never thought about it and nobody asked you
17 the question?

18 A That is correct.

19 Q You were interviewed last week, wereyou not?

20 A Yes.

21 Q How many interviews did you have in preparation
22 for today's trial? Not the prior trial, today's trial.

23 A Just yesterday. I came in yesterday. ..

24 Q You were interviewed by Mr. Sabetta and Mr. Fryman
25 yesterday?

2 A For this trial here?

3 Q Yes.

4 A Yesterday.

5 Q What time yesterday?

6 A Well, we flew in, I flew in here at 11:00.

7 Q From Miami?

8 A From Miami.

9 Q With your wife?

10 A With my wife.

11 Q When were you interviewed? What time?

12 A I don't know. A few hours later. I mean, I
13 didn't start right here. I was called up here about
14 2:00, I think. There was lunch and then in the interim,
15 there was about a hour's conversation.

16 Q An hour's conversation between whom?

17 A Mr. Sabetta, Mr. Fryman and myself.

18 Q Was your wife present?

19 A She was there.

20 Q Present?

21 A Yes.

22 Q What time was this?

23 A Well, we got in about 11:30, quarter to 12, they
24 went to lunch, they came back and they went over a few
25 questions and I answered a few questions and that was that.

Q What time?

A They came back I think about 1:15.

Q About 1:15?

A Approximately.

Q And this interview that you had was where, in Mr. Fryman's office or Mr. Sabetta's office?

A I believe it was in Mr. Sabetta's office.

Q Room 623?

A 423.

Q 423, excuse me. How long was that interview?

A Up until the time that I was called up here, which would be about 2:00.

Q About three-quarters of an hour?

A Approximately.

Q And you were asked questions about your testimony in preparation for your testimony yesterday, were you not?

A Yes. Some questions.

Q I beg your pardon?

A Some, some questions.

Q Were the questions -- who was asking the question, Mr. Fryman or Mr. Sabetta?

A Both. Mr. Fryman and Mr. Sabetta.

Q Did they show you at that session yesterday your prior testimony?

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Glasser - cross

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A I was shown something. Now, I really don't know what that was. I was shown something.

Q Testimony?

A Some testimony, yes.

Q But you don't recall whether it was the last trial or the grand jury?

A I have no idea. Some testimony as it concerned Schwartzbaum, and I happened to pass a remark that it doesn't run consecutively and it was a little mixed up. I couldn't even read it.

Q Other than that session three-quarters of an hour yesterday, were you interviewed by Mr. Sabetta and Mr. Fryman previously?

A About the Schwartzbaum matter? Not that I can recall.

Q The only interview you had in preparation for today's trial was yesterday?

A That's my best recollection.

Q And nothing before that?

A I don't think so.

MR. ESBITT: My voice is getting a little dry, your Honor, do you think this might be a good time for a short recess?

THE COURT: We can recess now. We will take 15

(In open court - jury present.)

THE COURT: Proceed, Counsel.

BY MR. ESBITT:

Q I think we were talking about your interview with Mr. Sabetta and Mr. Fryman yesterday, right?

A Yes.

Q Did you have any other interviews with Mr. Sabetta and Mr. Fryman before yesterday?

A Oh, yes.

Q In preparation for today's trial?

A For today's trial, no.

Q Never did?

A Not that I recall, no.

Q How long have you known Mr. Schwartzbaum?

A Many years.

Q You were representing his father's firm before he took over the firm?

A Yes.

Q That far back?

A Oh, many years.

Q Many years?

A Yes.

Q You knew his father?

A I knew him very well.

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Glasser-cross

Q And you knew Mr. Schwartzbaum pretty well?

A Very well.

Q What did you call him, Jack, Karl or Mr. Schwartzbaum?

A Jack.

Q And he called you Jack?

A That's correct.

Q Do you know his family too?

A Some of his family. Not all of it.

Q Do you know his reputation for honesty, truthfulness and fairmindedness and integrity?

A Do I know it personally?

Q Do you know his reputation?

A I think his reputation is very good.

Q Now, Mr. Glasser, do you know a man by the name of Wigdor?

A No, sir.

Q He is a fur manufacturer. Does that refresh your recollection?

A No, sir, it does not.

Q If I tell you that he is a member of the United Fur Association, would that refresh your recollection?

A No., it would not.

Q And if I tell you that he also acted as an

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2 Impartial Arbitrator for that Association, would it refresh
3 your recollection?

4 A No, it would not.

5 Q Is it not a fact, Mr. Glasser, that you had a
6 meeting and a conversation with Mr. Wigdor, a member of the
7 United Fur Association, and that you told him that you could
8 arrange for him to do contracting but that you had to get
9 \$5 a garment?

10 A No, it is not a fact.

11 Q No such meeting ever took place?

12 A I never met the man in my life.

13 MR. ESBITT: Your Honor, I must approach the
14 bench and perhaps I would suggest in the other room since
15 I have some documents to show your Honor.

16 THE COURT: All right.

17 (In the robing room.)

18 MR. ESBITT: Could we mark this for identifica-
19 tion, sir. I would like to have this marked for identifi-
20 cation.

21 THE COURT: Wait a minute. Let's get the chairs
22 for counsel to sit down, please.

23 MR. ESBITT: Thank you very much. I appreciate
24 the consideration. When y ou get along in years, you need
25 it.

MR. ESBITT: Mark this for identification, please.

(Defendant's Exhibit J, marked for identification.)

MR. ESBITT: If your Honor please, I would like to show you Defendant's Exhibit J, which is a copy furnished to myself at my request. I asked for a copy of the immunity orders and the documents on which it is based, and so I was furnished the other day, I think it was Friday, with the immunity orders including this immunity order of Mr. Jaffe, and I am not going to address myself to the order or the documents on which it is based, but your Honor will recall that my last question had to do with a Mr. Wigdor; do you remember, Judge, the last question?

THE COURT: Yes.

MR. ESBITT: I'm sure that you and my learned AUSA's are wondering why I asked that question. I would never ask the question except for the papers which I received from the government and I ask you to look at them, Judge, and then all the way through, the first pages are pro forma, but by a strange thing that happened, I was furnished with a part photocopy of some notes relating to Mr. Wigdor and this witness. I don't know how it happened, but there it is. It came from your office.

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Glasser-cross

2 You can't see it yet. It would be on the last
3 page.

4 MR. SABETTA: It wasn't meant to be stapled
5 to that, if that's what you mean.

6 MR. ESBITT: It came to me stapled.

7 MR. SABETTA: That's improper. That is not
8 part of the Jaffe --

9 MR. ESBITT: I'm sure it's not. I'm sure it's
10 not. You have seen that before?

11 MR. SABETTA: Oh, sure.

12 Incidentally, we provided that to counsel in
13 the earlier case as well prior to the trial.

14 MR. ESBITT: What?

15 MR. SABETTA: The last page which his Honor is
16 looking at which is an extract of two statements purporting
17 to pertain to Mr. Glasser. That was provided to counsel for
18 the defendants in the union trial prior to trial.

19 MR. ESBITT: Did you intend to give this to
20 me as part of this?

21 MR. SABETTA: Not as part of the Jaffe immunity
22 order and underlying papers. It is a separate document --

23 MR. ESBITT: What is this intended to be, Brady
24 material?

25 MR. SABETTA: Yes. In the earlier trial we

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2 submitted this document or a copy of it to his Honor for a
3 ruling whether it constituted Brady material and his Honor
4 ruled it did and we supplied it forthwith to counsel in that
5 case and since we believe that similar issues obtain in this
6 case and that his Honor's ruling will be consistent, we
7 supplied it.

8 MR. ESBITT: Now I ask if you have any additional
9 Brady material in addition to this?

10 MR. SABETTA: You have already asked that and
11 we replied to it. These documents are referred to and spe-
12 cifically enumerated in the covering letter that I sent to
13 you on Friday with these other documents.

14 MR. ESBITT: You made a reference to Mr. Wigdor
15 on that?

16 MR. SABETTA: I think I described it as an
17 extract of two redacted statements purportedly pertaining
18 to Mr. Glasser.

19 MR. ESBITT: What does that mean?

20 MR. SABETTA: These were taken out of some larger
21 statements. They don't come from the same documents.

22 MR. ESBITT: Will you tell me for the record
23 when this statement here is "Wigdor informed the writer,"
24 who is the writer?

25 MR. SABETTA: I have to take a look at the full

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document but my recollection offhand is that its a compliance officer of the Labor Department, whose name escapes me for the moment. I just don't recall.

MR. ESBITT: I just saw this, I think last night for the first time.

MR. SABETTA: I gave it to you Friday.

MR. ESBITT: I know. All I saw was the immunity order so I assumed it was all part of the immunity order until I leafed through it last night. I would like an opportunity to interview Mr. Wigdor. I assume he is in the industry somewhere, and perhaps call him as a witness.

THE COURT: Well, I will face that when we get to it. We may have some serious questions as to collaterality but I will face that issue when I get to it.

MR. SABETTA: I am sorry it was stapled together. I didn't review those documents to see whether they were properly put together.

(In open court.)

THE COURT: Mr. Esbitt, have you completed your cross examination?

MR. ESBITT: Yes, sir.

THE COURT: All right, redirect.

REDIRECT EXAMINATION

BY MR. FRYMAN:

Q Mr. Glasser, Mr. Esbitt asked you a number of questions concerning your testimony at a prior trial in this courthouse. About how long ago did that occur?

A The prior trial?

Q Yes.

A Sometime in March. Early in March.

Q And he asked you about your testimony concerning your conversation with Mr. Schwartzbaum. You recall those questions?

A Yes, he did ask me that.

Q And he pointed out certain parts of that testimony wherein you referred to importing in that conversation with Mr. Schwartzbaum and your testimony made no reference to contracting. You recall that?

A Yes, I do.

Q And he also referred to certain interviews that you had with government officials where you discussed the conversation with Mr. Schwartzbaum, and he again pointed out that in those interviews you had referred to discussion of importing and contracting, do you recall those questions?

A Yes.

Q In your testimony at that trial and in those

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earlier interviews, did you tell everything that you knew about that earlier conversation with Mr. Schwartzbaum?

A I told of the best -- you know, these are events as they came to me. If I left out a part, it is just that I left it out. I just didn't remember it.

Q You were responding to specific inquiries?

A I was responding to specific inquiries.

Q And you also testified about your conversation with Mr. Schwartzbaum before the grand jury back in 1972, did you not?

A Yes.

Q Was that in April, 1972?

A April of 1972.

Q Mr. Glasser, I want to read to you a portion of your grand jury testimony. This is from Government's Exhibit 3503 for identification, and I am reading beginning at page 14, line 20.

MR. ESBITT: Your Honor, I'd like to inquire what the purpose of the reading is. Is he trying to refresh the witness' recollection?

THE COURT: We will allow the question to be put and then if there is an objection we will take it up at that time.

MR. FRYMAN: Withdraw the last question.

Q What do you recall, Mr. Glasser, saying in the grand jury with respect to the conversation that Mr. Schwartzbaum --

A I really don't recall. You mean in 1972?

Q In 1972.

A I have no specific recollection at this time precisely what I said there. I just don't have that specific recollection.

Q Let me read to you from Government's Exhibit 3503

2 for identification, which is a transcript of the grand jury
3 testimony on April 27, 1972, beginning at page 14, line 20,
4 and see if this refreshes your recollection of what you said
5 to the grand jury on that day:

6 "Q And did you have an understanding with jack Schwartz-
7 baum, Schwartzbaum Furs?

8 "A I did.

9 "Q What was that understanding?

10 "A The firm wanted the protection, so to speak, or the
11 privilege of giving out contracting, some contracting, but also
12 to import from non-union shops or even from union shops from
13 countries other than the United States, which was prohibited
14 under the contract.

15 "Q And did Mr. Schwartzbaum indicate whether he would be
16 willing to pay for that privilege?

17 "A Mr. Schwartzbaum contacted us, me, and told me what
18 he wanted to pay.

19 "Q What did he say?

20 "A Incidentally, every one of these firms, they were
21 not contacted by the union. The firms contacted me to try
22 to do them the favor, so to speak.

23 "Q And how much did he say he was willing to pay?

24 "A He was willing to pay \$300 three times during the
25 year. In other words, a total of about \$900.

2 "Q Did you speak with Mr. Hoff about this?

3 "A I did."

4 Were you asked those questions and did you give those
5 answers?

6 A Yes, I was asked those questions and I did give
7 those answers.

8 Q And that was on April 27, 1972?

9 A That is correct.

10 Q Turning again to this prior trial that Mr. Esbitt
11 asked you about, Mr. Glasser, he asked you about a number of
12 various manufacturers and questions you were asked at that
13 trial about various manufacturers. First of all, was Mr.
14 Schwartzbaum a defendant in that earlier trial?

15 A No, he was not.

16 Q He asked you about other manufacturers. He asked
17 you about a Mr. Ginsberg. Was Mr. Ginsberg a defendant in
18 that trial?

19 A No, he was not.

20 Q He asked you questions about Mr. Sherman. Was Mr.
21 Sherman a defendant in that prior trial where you testified?

22 A No, he was not.

23 Q He asked you questions about Mr. Hessel and your
24 testimony about Mr. Hessel. Was Mr. Hessel a defendant at that
25 prior trial?

2 A No, he was not.

3 Q There were also questions about a Mr. Cohen. Was
4 Mr. Cohen a defendant at that prior trial?

5 A No, sir, he was not.

6 Q And Mr. Esbitt asked you some further questions
7 concerning your testimony about Mr. Baker. Was Mr. Baker
8 a defendant at that prior trial?

9 A No, sir, he was not.

10 Q Who were the defendants at that prior trial?

11 A The defendants were certain officers of the Furriers
12 Joint Council.

13 Q Do you know their names?

14 A A Mr. Hoff, Mr. Stofsky, Mr. Gold and Mr. Lageoles.

15 Q Do you recall how long you testified at that earlier
16 trial?

17 A At least two --

18 MR. ESBITT: If your Honor please, I object to the
19 time. I think it is totally immaterial.

20 THE COURT: Overruled.

21 A (Continuing) I believe it was a total of about two
22 days, or so.

23 Q Were you asked questions at that earlier trial that
24 elicited your entire recollection as to your dealings with all
25 of these manufacturers?

2 A I was.

3 Q You testified, Mr. Glasser, that you left the union
4 in 1970.

5 A The association.

6 Q You left the association in the summer of 1970; is
7 that correct?

8 A That is correct.

9 Q You were in the hospital for a period?

10 A For about three to four weeks, yes.

11 Q And you were visited in the hospital by Mr. Hecht?

12 A No.

13 Q You were visited in your home?

14 A In my home, while I was convalescing.

15 Q Who came to visit you at your home?

16 A Mr. Hecht and Mr. Greenberg.

17 Q And what was their position?

18 A Mr. Greenberg was the executive director and Mr.
19 Hecht was the labor manager..

20 Q They asked you a number of questions at your home?

21 A They asked me a lot of questions at my home.

22 Q What were the questions that they asked you?

23 A They were asking me questions as to whether
24 specifically Sherman Brothers was one of them, that they asked
25 me, about whether Sherman had been paying for protection, and,

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Glasser-redirect

2 if he had, who I -- and if I had been accepting money from
3 Sherman, who did I give the money to in the union.

4 Q Did they ask you about other firms?

5 A Yes, they did.

6 Q What other firms did they ask you about?

7 A They asked me about Corinna, they asked me about
8 Schwartzbaum and about Hessel, Chateau.

9 Q Did they indicate that they had information about
10 these firms?

11 A Mr. Greenberg indicated to me, without showing me
12 any proof of it, that he had statements from every one of
13 those firms, and Baker. I am sorry, I left out Baker.

14 Q You say you went back to the offices of the associ-
15 ation for one morning?

16 A One morning.

17 Q You spoke again with Mr. Hecht that one morning you
18 were there?

19 A I spoke to Mr. Hecht, Mr. Greenberg and three mem-
20 bers of the executive committee of the association.

21 Q Were there further questions at this session about
22 payments from certain manufacturers to you?

23 A Yes, there were.

24 Q After your meetings, first at your home with Mr.
25 Hecht and Mr. Greenberg, and, second, that morning at the

2 association, did you have any meetings with any union
3 representatives?

4 A Yes, I did.

5 Q What union representatives?

6 A With Mr. Hoff.

7 Q Did you relate to Mr. Hoff the questions that had
8 been put to you by Mr. Hecht and Mr. Greenberg?

9 A No, I did not.

10 Q Did you say that he had been -- they had been in?

11 MR. ESBITT: I object to the form of the question.
12 He can ask about the conversation, but I object to counsel
13 telling him what the conversation was.

14 THE COURT: Sustained.

15 MR. FRYMAN: Withdrawn.

16 Q What did you say to Mr. Hoff after you had met with
17 Mr. Hecht and Mr. Greenberg?

18 A Now, we have to separate -- are you talking now
19 about the conversation I had in my home or after at the associ-
20 ation?

21 Q Did you meet with Mr. Hoff between the two?

22 A No, I didn't.

23 Q After both meetings you met with Mr. Hoff. What did
24 you say to him?

25 A I met with Mr. Hoff for the purpose of the union

2 getting me an attorney for my pension rights.

3 Q Did you make any reference to your earlier conversa-
4 tion with Mr. Greenberg and Mr. Hecht?

5 A No. That meeting was -- I was no longer in the
6 employ of the association and that meeting was for the
7 purpose of the union to get me an attorney and to pay for that
8 attorney.

9 Q Had the association indicated to you that it was not
10 going to give you your pension?

11 MR. ESBITT: Your Honor, I object to that for two
12 reasons. First of all, it is completely collateral as to his
13 discussions with the association, and I object to counsel
14 putting words in the witness' mouth.

15 THE COURT: As to the first objection, overruled.
16 As to the second, I think you can elicit this without suggesting
17 specifically what the answer might be.

18 MR. FRYAMN: Let me withdraw the last question. I
19 will ask another question, Mr. Glasser.

20 Q Do you know if any union official was aware of the
21 circumstances surrounding your departure from the association?

22 A Yes.

23 Q What official was that?

24 A Mr. Stofsky and Mr. Hoff.

25 Q How are you aware of their knowledge?

MR. ESBITT: If your Honor please, I object to that. Completely irrelevant to the issues in this case. It relates to his leaving the association. There has been no cross examination with respect to this matter, if your Honor please, and therefore it is improper redirect.

THE COURT: Sustained.

Q Mr. Glasser, you mentioned that you had gone in the hospital in July of 1970?

A In the end of July, yes.

Q Was this for --

A An operation.

Q Did you have any other physical ailments in 1970?

A In 1970?

Q Yes.

A No.

Q How old are you today, Mr. Glasser?

A Sixty-seven.

Q Have you ever had any other physical ailments?

A Yes.

MR. ESBITT: If your Honor please, I object. I don't see the relevance of Mr. Glasser's physical ailments.

MR. FRYMAN: Let me withdraw that, your Honor, and phrase the question again.

Q Focusing on the time of your grand jury appearance,

2 was there any physical ailment prior to that that you had
3 suffered?

4 A Yes.

5 MR. ESBITT: Objection, if your Honor please.

6 THE COURT: Overruled.

7 Q What was that?

8 A I suffered a heart seizure and was hospitalized for
9 a period of time.

10 Q When did that occur?

11 A That occurred sometime in April of 1972.

12 Q You mentioned, I believe, that you flew to New York
13 yesterday morning.

14 A Yes. Eight a.m. flight out of Miami.

15 Q What time did you get up yesterday morning?

16 A Four o'clock in the morning.

17 Q Had you originally planned to fly to New York yes-
18 terday on Monday?

19 A No, I did not.

20 Q When did you originally plan to fly up?

21 MR. ESBITT: If your Honor please, I object to this.
22 Completely irrelevant.

23 THE COURT: No. You inquired in the area. I will
24 allow it to be explored. Go ahead.

25 Q When did you originally plan to fly up, Mr. Glasser?

2 A Sunday.

3 Q What was the reason you delayed your flight?

4 A My wife came down with the flu and we didn't think
5 we would be able to make it at all, because I cannot travel
6 alone, I am not permitted to travel alone. I must have my
7 wife accompany me.

8 Q What is the reason you cannot travel alone?

9 A Because I have a bad heart. I have coronary trouble.

10 Q So you flew up yesterday on the 8 o'clock plane?

11 A Eight a.m. flight.

12 Q You got up at 4 a.m. yesterday?

13 A To make the flight, yes.

14 Q You stayed in New York last night?

15 A I stayed in New York last night.

16 Q What time did you get up this morning?

17 A This morning? We were up at 7 o'clock.

18 Q You live in Miami now?

19 A Yes, I do.

20 Q You had come to New York several months ago or a
21 month or so ago to testify at the earlier trial?

22 A Yes, I did.

23 Q Did you go back to Miami after that testimony?

24 A I did.

25 Q Have you been back to New York at all between the time

you were here for the earlier trial and your arrival yesterday?

A Yes. I was recalled once in the interim after I had testified and had gone home, I received a call from Mr. Sabetta that he would require me to come back, this was about two or three days later, and we came back.

Q You testified further at the other trial?

A We testified further and then I went back home.

Q After the conclusion of the earlier trial, have you made any other trips to New York until your trip yesterday?

A Other trips to New York, we came up at the time that Mr. Sherman, Mr. Hessel and the others -- I am sorry. We came up for another matter.

Q Approximately when was that?

A About a week ago.

Q How long did you stay on that trip?

A I think it was about four or five days.

Q During that period that you were here in New York during that four or five days, did you meet with Mr. Sabetta and me?

A We did.

Q In those meetings did the subject of union fur
manufacturers come up?

A Union fur manufacturers? Yes.

2 Q Fur manufacturers.

3 A Fur manufacturers, yes.

4 Q When did you go back to Florida on that last trip?

5 A It would be a week ago Wednesday.

6 Q Did you meet with Mr. Sabetta and me the day you
7 returned?

8 A The day we returned, yes.

9 Q Was that in my office?

10 A That was in your office, Mr. Fryman's office.

11 Q That morning that we met, was there any discussion
12 of Mr. Schwartzbaum?

13 A The answer is no. You had indicated to me that he
14 was sick and that there would be a postponement of his issue.

15 Q Do you recall everything that was discussed in that
16 session that morning? How long did that session last?

17 A Until about 1 o'clock.

18 Q Do you recall when it began?

19 A About 10:30, 11.

20 Q Were there a number of subjects discussed that
21 morning?

22 A There were a number of subjects discussed.

23 Q Do you recall now everything that was said in that
24 session?

25 A More or less, yes.

2 Q Do you recall everything that was said about Mr.
3 Schwartzbaum?

4 A Well, outside of the fact that he was not going to
5 come up because of illness, I don't recall any discussion on
6 Mr. Schwartzbaum at that particular time.

7 Q Mr. Glasser, I show you a document that has been
8 marked as Government's Exh. b. t 3511 for identification. I ask
9 if that refreshes your recollection about --

10 MR. ESBITT: I'd like a voir dire with respect to
11 this, your Honor.

12 Q -- what was said in that conference?

13 THE COURT: Just a moment. Let's take it a step at
14 a time.

15 (Record read.)

16 A Yes, it does.

17 THE COURT: You have looked at it and the answer
18 is yes?

19 THE WITNESS: Yes.

20 THE COURT: You may examine it, counsel.

21 MR. ESBITT: I have seen it, your Honor.

22 THE COURT: All right, go ahead.

23 VOIR DIRE EXAMINATION BY MR. ESBITT:

24 Q Have you ever seen this document before today?

25 A Before today, no.

2 Q This is the first time --

3 A This document, yes.

4 MR. ESBITT: I object. If your Honor will observe
5 the document, it is a document prepared by Mr. Fryman and the
6 witness has never seen it before.

7 THE COURT: I can read it and I heard the testimony.
8 The objection is sustained.

9 MR. FRYMAN: Could we have a side bar conference on
10 this, your Honor?

11 THE COURT: If you wish.

12 (In the robing room.)

13 MR. FRYMAN: Your Honor, Government's Exhibit 3511
14 for identification is a memorandum which I prepared after a
15 meeting with Mr. Glasser. He did not prepare it, as he
16 testified he hasn't seen it before, and my question to him
17 was whether this memorandum refreshes his recollection as to
18 the conferences with Mr. Schwartzbaum. There is no require-
19 ment, I don't believe, that you have to show a witness a
20 memorandum which he prepared in order to refresh his recollec-
21 tion.

22 THE COURT: I don't really know.

23 MR. SABETTA: May I say, your Honor, I think the law
24 is very clear on this. Sometimes it is said, half in jest,
25 although I think accurately as a matter of principle, that you

2 could show a witness the telephone book with respect to a
3 given question, if that refreshed his memory, that would be
4 sufficient. If he said, for instance, "I don't recall now
5 where that individual lived," "Mr. X, I show you the Manhattan
6 telephone book, would you look at that, please, on page"
7 whatever. He looks at it and says, "Now I do recall."

8 There is no requirement that the document shown be
9 authored by the witness in order to refresh his recollection.

10 THE COURT: Let me check McCormick on evidence.

11 MR. ESBITT: This is a self-serving document pre-
12 pared by Mr. Fryman.

13 THE COURT: That may be also true.

14 MR. ESBITT: It is true. I am sure. He has his
15 name on it. It would be absurd to put his self-serving docu-
16 ment in front of the witness and then say "does this refresh
17 your recollection." Of course he will say yes. That is what
18 he said.

19 MR. SABETTA: With all due respect to Mr. Esbitt, he
20 has shown Mr. Glasser a number of documents during this trial
21 which have not been authorized by Mr. Glasser, including my
22 notes, Mr. Fryman's notes, and asked him "does that refresh
23 your memory about the conferences."

24 THE COURT: Is that not so, Mr. Esbitt?

25 MR. ESBITT: Of course it is. Cross examination

2 permits me to do it and this is redirect.

3 MR. SABETTA: There is no difference.

4 MR. ESBITT: Of course there is.

5 MR. SABETTA: I don't think that is true, Mr.
6 Esbitt.

7 THE COURT: Just hold it a minute.

8 (Pause.)

9 THE COURT: As you might imagine, they argue both
10 sides of it and cite authorities for both sides and say that
11 it is in the discretion of the Court. McCormick seems to be
12 saying that it is -- he says, "It would seem that this
13 liberality of practice is the wiser solution," meaning to simply
14 follow the procedure of using anything that might refresh his
15 memory, letting him read it, asking the question as to whether
16 it does and then going on from there.

17 MR. ESBITT: In the first place, this witness has
18 denied this meeting that Mr. -- when I brought it out he denied
19 a meeting prior to the one of yesterday. That is number one.
20 Number two, naturally, Mr. Fryman attempted to rehabilitate
21 the witness and got him to admit that there was a meeting and
22 then asked him was Schwartzbaum discussed, and he said posi-
23 tively not. Positively not. There was an adjournment for
24 some reason or other. Then he doesn't recall what happened.

25 Now Mr. Fryman would like to refresh his recollection.

2 But what is he using to refresh his recollection? He is using
3 a memorandum which he himself prepared. Judge, any district
4 attorney, all he has to do is prepare memorandums, self-
5 serving memorandums for the file, self serving because this
6 witness never saw it, a self-serving memorandum, then show it
7 a witness, "Does this refresh your recollection?" Doesn't
8 it appear absurd to your Honor for that to be the law? I
9 don't think it is, not in this type of situation.

10 There may be cases, I haven't looked them up, I
11 haven't had the opportunity, but it certainly seems to me
12 that Mr. Fryman cannot prepare a memorandum for the file in
13 his words, the witness has never seen this memorandum, and
14 show it to him, "Oh, sure, this refreshes my recollection."

15 THE COURT: Counselor, in the first place I don't know
16 that the witness is going to say that it does refresh his
17 recollection.

18 MR. ESBITT: He has already said so.

19 THE COURT: Yes, I think you are right. he has said
20 so. The points that you make are points that I will allow you
21 to make on re-cross, if you wish to go into it. I will re-
22 verse my ruling and I will let it in. You may make your
23 objection at the time and you will have your exception, of
24 course.

25 MR. ESBITT: May I suggest this, your Honor --

2 THE COURT: Why don't you just make your exception
3 out there? That is all that is required.

4 MR. ESBITT: It is a direction with respect to how
5 to handle the proceeding. Since your Honor is going to per-
6 mit it and I will note my objection on the record, then I ask
7 that it merely be shown to him and then taken away. I would
8 object to his reading it, studying it and using it --

9 THE COURT: Yes, that's a fair request.

10 MR. FRYMAN: He has to read it while it is shown
11 to him.

12 THE COURT: He has to read it while it is in his
13 hands. Then before you put the next question, take it away
14 from him.

15 MR. FRYMAN: Can I refer him to a particular part of
16 it?

17 THE COURT: If you wish. If counsel wishes to come
18 along behind that and refer him to any other portion, he can
19 do that too.

20 MR. ESBITT: I am not consenting to his referring to
21 anything, Judge. This is a self-serving statement, prepared
22 by counsel.

23 (Continued on next page.)
24
25

2 (In open court.)

3 THE COURT: I am reversing my ruling. Put
4 the question.

5 BY MR. FRYMAN:

6 Q Mr. Glasser, I show you Government's Exhibit
7 3511 for identification and I ask you to read the last
8 paragraph of this document on the first page.

9 MR. ESBITT: May I note for the record, your
10 Honor, my objection.

11 THE COURT: Yes.

12 A I have read it.

13 THE COURT: All right, you have noted it. Go
14 ahead.

15 Q Does that paragraph, Mr. Glasser, refresh your
16 recollection?

17 A Yes, it does.

18 Q Does it refresh your recollection about your
19 second conversation with Mr. Schwartzbaum?

20 A Yes, it does.

21 Q Did you mention Mr. Hoff's name in that second
22 conversation?

23 MR. ESBITT: I object to the form of the
24 question, your Honor. I think he should be limited to
25 asking the witness what the conversation was.

THE COURT: All right. Sustained.

Q What did you say to Mr. Schwartzbaum in that second conversation?

A I came back to Mr. Schwartzbaum and I said, I have had a conversation with Mr. Hoff. He has said okay, you can go ahead and do it.

Q Mr. Glasser, you have testified that after a meeting with Mr. Hinckley you were granted immunity from prosecution as to anything you would say in your testimony, except a prosecution for perjury, is that correct?

A That's correct.

Q And since you have -- and since you have received that grant of immunity, you have testified on a number of occasions under oath?

A I have.

Q Have you ever lied under oath?

A Under oath, no, sir.

MR. FRYMAN: No further questions, your HOnor.

THE COURT: Recross.

RECROSS EXAMINATION

BY MR. ESBITT:

Q Mr. Glasser, before you saw this memorandum, G.X. 3511 you had no recollection as to whether or not you had told Mr. Schwartzbaum the name of the union official,

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2 isn't that true?

3 A There are so many things -- no, I had no
4 recollection.

5 Q That's true, no recollection until you saw
6 this memorandum?

7 A That refreshed my memory, yes.

8 Q This memorandum refers to a meeting that you
9 had with Mr. Fryman, does it not?

10 A Yes, it does.

11 Q When was that meeting held?

12 A It must have been about a week ago.

13 Q Do you remember what day?

14 A Well, we flew in here on a Monday morning.
15 We took an eight o'clock flight Monday morning and got
16 in here about 11:00, 11:30. That would be about the day.

17 Q On Monday or Tuesday?

18 A Monday or Tuesday.

19 Q You are not sure which day you had the meeting?

20 A No. It was on the 20th.

21 Q On the 20th?

22 A That's when we took the flight in.

23 Q On the 20th of March you took the flight in?

24 A Yes.

25 Q And was it on that same day, or the next day that

1
2 you had the meeting --

3 A It could have been four or five days later.

4 Q It could have been?

5 A It could have been.

6 Q Again, you are not sure?

7 A No, not particularly that meeting. It could
8 have been three, four, five days later.

9 Q You came in on the 20th of March?

10 A Yes, I think --

11 Q That's a Wednesday.

12 A On a Wednesday. That is for sure. Wednesday.

13 Q And do you remember what day of the week it
14 was that you had the meeting with Mr. Frymand and Mr.
15 Sabetta?

16 A It could have been a Monday or Tuesday --

17 Q Of the following week?

18 A Of the following week.

19 Q So it could have been on the 25th or the 26th
20 of March?

21 A It could have been, yes.

22 Q Who called the meeting?

23 A Who called the meeting?

24 Q Yes.

25 A I guess Mr. Fryman did.

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1 Q Please don't guess. Do you have any recollection
2
3 as to who called the meeting?

4 A Mr. Fryman did.

5 Q You are certain of that?

6 A He was the one that's handling the issue. He
7 called the meeting.

8 Q Your recollection today is that he called
9 the meeting?

10 A It was Mr. Sabetta and Mr. Fryman were both
11 present.

12 Q And your wife?

13 A And my wife and myself.

14 Q Anyone else present?

15 A I think Mr. Duke but I'm not a hundred percent
16 sure that he was there.

17 Q And that was in Mr. Sabetta's office?

18 A I believe it was in Mr. Sabetta's office.

19 Q How long did the meeting last? Your best
20 recollection.

21 A A few hours.

22 Q It started in the morning?

23 A No, not right away. There were other matters
24 that both of them had to attend to.

25 Q That had nothing to do with you?

2 A That had nothing to do with me.

3 Q When they finished up these other matters,
4 they then interviewed you?

5 A They interviewed me, yes.

6 First they informed me that Mr. Schwartzbaum
7 was ill. I was told that he was ill and that there would
8 be a postponement of at least a week on that matter.

9 Q Now, after these other matters were -- by
10 the way, was Mrs. Glasser interviewed too?

11 A Yes, I think she was.

12 MR. ESBITT: Do you have a memorandum such as
13 3511 under 3500 material with respect to Mrs. Glasser?

14 MR. FRYMAN: It is an improper question to
15 raise at this point, your Honor. She has not been called
16 as a witness.

17 THE COURT: It is.

18 MR. ESBITT: I am asking the government --

19 THE COURT: Don't repeat it, please. Any
20 such discussion should be at the side bar.

21 MR. ESBITT: What was your Honor's ruling?

22 THE COURT: I am assuming the question was
23 withdrawn. I ask you not to repeat it again in the
24 courtroom.

25 Q Who interviewed Mrs. Glasser?

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A If she was interviewed, it was Mr. Sabetta and Mr. Fryman.

Q Mr. Glasser, you just testified that she was interviewed.

A She was present.

Q No, you testified that she was interviewed.

A I don't know if they asked her any specific questions. She was present while I was being questioned.

Q Was she interviewed?

A I don't know if they asked her any questions at all.

Q This is only a week ago today?

A Right.

Q You don't recall?

THE COURT: Objection sustained.

Q How did this interview proceed? Did they ask you questions, Mr. Sabetta?

A Mr. Sabetta and Mr. Fryman asked me questions.

Q How long did that interview last?

A Oh, over an hour.

Q Did they both question you or just one?

A No, both. Both were sitting there.

Q Mr. Sabetta --

A And Mr. Fryman.

2 Q Did they have a prepared sheet or memorandum
3 of any kind with a list of questions that they were asking
4 you?

5 A I have no knowledge that they did anything.

6 Q Did they take notes?

7 A I don't know wh at they did. I didn't watch
8 what they were doing.

9 Q How large is the room?

10 A It's an office room.

11 Q And there were four of you in the room, four or
12 five, is that right?

13 A That's correct.

14 Q So Mr. Sabetta couldn't have been very far
15 away from you , could he?

16 A I was not watching whether --

17 Q Was he further away from you than he is now?

18 A No.

19 Q Closer?

20 A About that distance.

21 Q And also Mr. Fryman?

22 A That's correct.

23 Q You didn't know whether or not they were
24 taking notes?

25 A I paid no attention to it.

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Q You didn't notice that?

A I paid no attention to it.

Q Would you tell us what questions were asked of you by Mr. Sabetta and what answers you gave?

A No, I couldn't tell you the specific questions and the specific answers at this time. I don't know. Whatever questions they asked me, I answered.

Q But you have no recollection today of the questions asked of you one week ago by Mr. Sabetta, no recollection?

A They asked me questions concerning my involvement with Mr. Schwartzbaum.

Q What specific question did they ask you?

A Everything pertaining to the issue.

Q I am asking you for a specific -- what was the first question Mr. Sabetta asked you?

A Did Mr. Schwartzbaum pay any monies to you?

Q Was that his first question?

A It may have not been his first question. I can't recall his first question.

Q And do you recall what questions were asked of you by Mr. Fryman?

A No, I don't specifically recall the specific questions. Various questions were asked of me.

Q But you don't recall?

A Specifically, no.

Q Did Mr. Fryman take notes?

A I wouldn't recall seeing anybody take notes.
If they did, they did, but I didn't see it.

Q There wasn't a court reporter in the room or
a secretary?

A No, there was not.

Q Was there a dictaphone machine to your knowledge?

A No, there was not.

Q Now, you have been asked by Mr. Fryman and
he showed you the last paragraph of the memorandum, right?

A Yes, he did.

Q And you testified that it refreshed your
recollection about whether or not you told Mr. Schwartzbaum
that Mr. Hoff gave the okay?

A Yes, it does.

Q Who brought up the question of whether or not
you told Mr. Schwartzbaum of Hoff saying it was okay?

A I believe I volunteered the information.

Q You volunteered the information?

A In other words, I gave the information.

Q Did anybody ask you that specific question?

A It could have been asked of me. I can't recall

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2 if I was specifically asked that question.

3 Q And after you -- that is the first time that there
4 is a record anywhere that you told Mr. Schwartzbaum the name
5 of the union official, is that not true?

6 MR. FRYMAN: Objection.

7 THE COURT: Sustained.

8 Q You made notes of your meetings and conversa-
9 tions with Mr. Schwartzbaum?

10 A I made no notes of meetings with any body.

11 Q Well, you produced this morning some notes.

12 A This is notes of my best recollection, after
13 the events.

14 Q Of course.

15 A Written in 1972.

16 Q Is there anything in those notes of yours that
17 you told Mr. Schwartzbaum that Mr. Hoff was the union offi-
18 cial involved?

19 A I don't know.

20 Q Well, will you look at it again.

21 A Shall I quote from this?

22 Q Sure.

23 A "K.J. Schwartzbaum." Then the reference to
24 Jack Schwartzbaum. \$300 three times a year. The years
25 '68 and '69. Non-union imports and contracting. Hoff.

One payment to Jaffe before he was replaced by Zeibel.

That's what the note says.

Q I understand that.

Is there anything in your notes which indicates that you told Mr. Schwartzbaum the name of the union official?

A In these notes, no.

Q And I think you testified this morning that when Mr. Hinckley interviewed you, you did not tell him that you had told Mr. Schwartzbaum the name of the union official, is that right?

A I don't believe I did.

Q And you didn't tell it to Mr. Sabetta in preparation for the prior trial?

A I don't remember what I told Mr. Sabetta.

Q But you didn't testify in the grand jury that you had told Mr. Schwartzbaum of the union official, did you?

A I don't think I was ever asked that question.

Q But you didn't state --

A I don't think so.

Q And you didn't say it at the prior trial, so this is the first time that we have a record anywhere of your telling anybody that you had told Mr. Schwartzbaum the name of the union official?

MR. FRYMAN: Objection.

THE COURT: Objection sustained.

Q Did you tell Mr. Fryman at this meeting last week that the first payment of \$300 was divided equally between you and Jaffe and Hoff?

A I don't recall that I told it to him.

Q And is it a fact or is it not a fact?

A Oh, it is a fact.

Q That you divided the first payment between the three of you?

A It is.

Q It is a fact?

A Yes.

MR. ESBITT: No further questions.

MR. FRYMAN: No redirect, your Honor.

THE COURT: Step down.

(Witness excused.)

THE COURT: All right, ladies and gentlemen, we will recess for lunch. Do not discuss the case with anyone. Don't talk about it among yourselves. We will resume at 2:15 .

(Luncheon recess taken.)

AFTERNOON SESSION2:15 p.m.

(In the robing room.)

THE COURT: Yes, Counselor?

MR. ESBITT: Your Honor, I understand from Mr. Fryman that the next witness is one Harry Jaffee, a former union employee, an employee of the union.

THE COURT: Yes.

MR. ESBITT: I don't know exactly what the government intends to prove through him. I have a pretty good suspicion since he testified before your Honor. If the purpose of that testimony is to elicit the same, approximately the same answers which he gave in the prior trial, then I want to place my objection on the record before the jury comes in so we save the time.

THE COURT: Could you be more specific?

MR. ESBITT: Yes, sir. As I understand it, he is prepared to testify to receiving money from Mr. Glasser and had conversations with Mr. Glasser. As I understand it also, he never had a conversation with respect to money with Mr. Schwartzbaum.

So, number one, I object to it on the ground that -- first of all, there is no charge of this event; in other words, nothing in the indictment on this, number

2 one.

3 Number two, this is a conversation not in the
4 presence of the defendant and I think it is inadmissible
5 and by the way, Judge, let me get that memorandum. I have
6 taken some of my notes from that case and I feel that this is
7 an appropriate opportunity for me to reargue the question
8 as to whether it is admissible because your Honor admitted
9 it this morning or yesterday. And you relied upon the
10 Annunziata case and other cases and I would like to point
11 out to you, if I may just go out and get some pages from
12 the Annunziata case, as to why this case is different from
13 that. Perhaps your Honor might reconsider your over-
14 ruling of my objection.

15 THE COURT: All right.

16 MR. ESBITT: Now, as I read this Annunziata
17 case, the Court of Appeals had indicated that they allowed
18 this hearsay evidence because there was substantial proof
19 in the record as to a conspiracy outside, and I quote,
20 "Other than whose admissibility is under challenge," and
21 that's on page 378 of this decision.

22 It is enough if evidence other than that
23 whose admissibility is under challenge disclosed, one,
24 referring to a conspiracy. Now, if you eliminate, your
25 Honor, the challenged testimony -- you will recall this

1 morning or yesterday I challenged initially at that point
2 when the witness was asked to testify as to what happened
3 after he left Mr. Schwartzbaum at the first meeting. You
4 recall the testimony was that he had a conversation with
5 Mr. Schwartzbaum.
6

7 Mr. Schwartzbaum said, I am importing from
8 Canada and can you see -- see I don't have any trouble
9 with the union and he said, I'll let you know. That was
10 the conversation.

11 Then he asked him, what did you do next,
12 leading up to his meeting and conversation -- that's
13 when I interrupted and I argued before your Honor and
14 your Honor overruled me.

15 Now, it appears from this case, and the
16 distinction between our case and this case is that,
17 according to this as I read it, "It is enough if
18 evidence other than whose admissibility is under challenge".
19 Point 5, if your Honor please. It's on page 378.

20 Now, your Honor, at that point when I made
21 an objection, there was no evidence at all of any con-
22 spiracy or joint venture, so to speak, there was no evidence
23 outside of the -- outside of this evidence which he is
24 trying to elicit. There wasn't any. There was a mere
25 conversation. He didn't say anything about money, we know

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2 that, the record is clear. He didn't say anything about
3 doing anything improper. Not a word. All he said was,
4 I am having importing and see what you could take care
5 of. Keeping in mind that his duty is to do everything he
6 can for his member.

7 So if you exclude -- if you exclude the evidence
8 which is under challenge, then there is no evidence of any
9 conspiracy at all at that point and if there isn't any,
10 I submit it is admissible.

11 Let me go a little further in this case because
12 I think there is further indication.

13 For example, the distinction is clearly pointed
14 out on page 380 and the last paragraph on the righthand side,
15 where the Court of Appeals said:

16 "To round out this discussion we," and I can't
17 read it so well, it is so blurred -- what is that next
18 word?

19 THE COURT: "We add"--

20 MR. ESBITT: "We add that there was ample
21 evidence other than Harry's statement to Richard," which
22 was the hearsay testimony objected to, to show the common
23 plan.

24 Judge, there is no ample evidence in this case
25 to show a so called common plan. There is nothing, if you st

2 at that point and say, should this be admissible on the
3 theory of the Annuziata case, you have to determine --
4 you Honor must determine that there must be ample evidence
5 to establish a conspiracy, and there isn't any. There is
6 nothing.

7 THE COURT: Well, then it sounds as though
8 what you are saying is that when I overruled your objec-
9 tion, I should have indicated that it was taken subject to
10 connection. You may be right. I should have taken it sub-
11 ject to connection. That is quite possible.

12 MR. ESBITT: Now, as of this moment, we have no
13 other connection other than his testimony.

14 THE COURT: Yes, but the government hasn't com-
15 pleted its case. Assuming that that was the ruling that
16 should have been made.

17 MR. ESBITT: Okay.

18 THE COURT: It could be that that would be
19 the proper sequence and that before the end of the govern-
20 ment's case I would have to make a Geaney-type ruling,
21 that's possible. I would have to think about it.

22 Do you want to be heard on it, Counsel?

23 MR. SABETTA: I talked about this with Mr.
24 Fryman, your Honor, and we have agreed, at least initially,
25 I will respond.

1 I don't mean by my silence to acquiesce in
2 anything Mr. Esbitt has said. I believe he is wrong. We
3 understand, as I am sure the Court understands and Mr.
4 Esbitt understands that the government must show by a
5 fair preponderance the existence of a joint venture
6 independent of any hearsay evidence before the disputed
7 hearsay can be admitted in evidence against the defendant
8 on trial.
9

10 There is no question but that's the Geaney-
11 type principle we are applying. Mr. Esbitt is quite,
12 quite incorrect in characterizing the conduct of Mr.
13 Glasser and anyone else's conduct other than Mr. Schwartz-
14 baum as somehow inadmissible on a hearsay basis.
15

16 Conduct is simply not hearsay, no matter how
17 you stretch it, how you want to frame it, whose it is,
18 it is not hearsay, Mr. Esbitt, and it has nothing whatever
19 to do with Geaney.

20 And Mr. Glasser's acts and Mr. Hoff's acts
21 in transmitting and receiving respectively those payments
22 from Mr. Schwartzbaum is not hearsay and that evidence is
23 admissible in determining whether the fair preponderance
24 test has been met. It has nothing to do with any hearsay
25 principle.

THE COURT: Let me just react to this. Without

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stating one way or the other whether I agree with the statement that conduct is never hearsay, I do agree on the basis of U.S. v. Geaney and on the basis of U.S. v. Pordum that for purposes of this discussion on this point there must be a distinction made between acts and utterances. That distinction is made in Geaney and that distinction is made and clarified in Pordum.

So that Mr. Sabetta is certainly correct with reference to the issue we are discussing here, that acts aren't very different from the utterances. It may be that some instruction is indicated. At this late stage I don't know whether I would clarify the matter for the jury or confuse it to try to give an instruction about "subject to connection."

In any event, it may well be that some ruling is indicated in any event by the Court before we get to the very end of the government's case as to whether there has been a connection.

I think it might be better at this point not to, at this late stage --

MR. ESBITT: I have no objection, your Honor. I have no objection and I ask your Honor to reconsider -- you already ruled now on the question of acts.

THE COURT: Yes.

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2 MR. ESBITT: With respect to conversations
3 I ask your Honor to reserve decision on the question of
4 whether or not conversations between Mr. Glasser and Mr.
5 Hoff, not in the presence of the defendant, is admissible.
6 I submit it is not.

7 THE COURT: Well, I will make the same ruling
8 with respect to Jaffee that I made with respect to -- at
9 an earlier point when you raised the issue which had to do
10 really with acts. I will receive it now, in part, because
11 although the evidence of the government's case is not yet
12 complete, I do believe there is sufficient evidence on
13 the record already of acts which would lay the basis for
14 there being other evidence, apart from the utterances,
15 to lay the basis for the matter which they would offer.

16 Do you want to be heard on it to make
17 your record?

18 MR. SABETTA: I want to say one other thing,
19 your Honor. When we are talking about declarations as
20 hearsay we are, of course, not talking about declarations
21 by the defendant. Any conversations he may have had with
22 Mr. Glasser which have been testified to here today come
23 into the category of admissions, I suppose, or statements
24 in furtherance by the defendant. They are not hearsay.

25 THE COURT: That's right.

2 MR. SABETTA: It seems to us that what has
3 already been testified to by Mr. Glasser with respect to
4 both his first and second meetings with Mr. Schwartzbaum
5 establish clearly, if believed, that there was a joint
6 venture between Mr. Glasser and Mr. Schwartzbaum whose
7 objectives were to obtain union acquiescence or freedom
8 from union harassment to violate the contract in one of
9 two different ways as enumerated and that moreover when
10 Mr. Glasser returns from the second meeting with Mr. Hoff--
11 the first meeting with Mr. Hoff and tells Mr. Schwartzbaum,
12 I have talked it over with Charlie Hoff and we have gotten
13 his acquiescence, he says okay, go ahead, if there
14 hasn't been sufficient up to then, it certainly is
15 sufficient up to that point to charge Mr. Schwartzbaum
16 with knowledge of what was going on in furtherance of his
17 interest.

18 I frankly don't believe we have to go that
19 far.

20 THE COURT: I don't either, Counselor. I
21 really think if they have that kind of evidence, fine
22 for them. But I don't believe that it is necessary to
23 go even that far. If they succeed in getting the jury
24 to believe -- I shouldn't put it in those terms. If they
25 succeed in presenting evidence which indicates that if

2 believed, Mr. Schwartzbaum gave money to Mr. Glasser intending
3 that it pass to certain union officials or employees, or if
4 an inference can be drawn that that was what he had in
5 mind, that suffices to indicate Mr. Schwartzbaum's partici-
6 pation in this broader -- well, at least in these acts.

7 He is only charged with --

8 MR. SABETTA: He is charged with four, but really
9 there is only evidence of three.

10 THE COURT: But there is enough evidence for
11 the jury to conclude that Mr. Schwartzbaum was aware, if
12 the jury chooses to believe this, that Glasser was a middle
13 man in working out things with the union.

14 They may reject that. They may not choose to
15 believe it but I have to couch it in terms of what is possible
16 if they choose to believe it. What's reasonably possible.

17 In any event --

18 MR. ESBITT: I would like to make just one
19 observation.

20 THE COURT: Go ahead.

21 MR. ESBITT: I think it is essential in this case
22 and I have asked for a charge to that respect. It is not enough
23 for this jury to even believe that Schwartzbaum may have had
24 an understanding with Glasser about getting the union to
25 agree. The proof must be that he knew it was Hoff that the

2 deal was with and he knew that the payment was going to
3 Hoff. Otherwise you don't have a compliance with the
4 indictment, Judge.

5 THE COURT: I'm not going to rule on that yet
6 until we get up to the requests to charge, all right.

7 MR. ESBITT: I just wanted to remind you on
8 that.

9 Just a question, your Honor is going to rule
10 on the charges, I assume, before you submit them to the jury?

11 THE COURT: Yes. When are you able to sum up,
12 tomorrow morning?

13 MR. FRYMAN: That depends on Mr. Esbitt.

14 MR. ESBITT: I don't know whether we will finish
15 this afternoon.

16 THE COURT: You don't have to finish this
17 afternoon. I'm just trying to get some idea. I would like
18 you to have th rulings on your request before you sum up.

19 MR. ESBITT: Yes, sir.

20 MR. FRYMAN: Your Honor, the government should
21 finish its case, I think, in under an hour.

22 THE COURT: All right.

23 ME. FRYMAN: May I ask you a question, Judge?
24 Judges differ in the handling of this. Do you intend to
25 give us, for example, this afternoon, a copy of your

2 proposed charge to the jury?

3 THE COURT: No, sir. I will give you the
4 rulings --

5 MR. ESBITT: Just prior to the charge?

6 THE COURT: No, prior to your su-mations,
7 which probably means first thing tomorrow morning.

8 MR. ESBITT: If we finish this afternoon, the
9 first thing tomorrow morning. The reason I ask -- the most
10 difficult thing, Judge, one of the most difficult things in
11 trying a case is to listen to a Judge's charge and then try
12 to resolve-- while you are thinking of one point, the Judge
13 has already passed onto another.

14 THE COURT: I appreciate your problem.

15 I will give you rulings on requests to
16 charge before you sum up.

17 MR. ESBITT: There is one other witness, too.
18 We might as well get to that in order to not hold up the
19 jury once they are in.

20 I understand that the government will produce
21 a witness, one Albert Chambers, is that right?

22 MR. FREYMAN: That's correct.

23 MR. ESBITT: Do you want to tell the Judge
24 what you intend to prove for this witness?

25 MR. SABETTA: You said you had an issue with
respect to his appearance. I don't know if it is

incumbent upon us --

MR. ESBITT: I'm guessing as to what he is going to testify to. Is there any secret about that?

MR. SABETTA: You have the 3500 material as regards him. In brief, Mr. --

MR. ESBITT: The only 3500 material I have on him is your notes.

MR. FRYMAN: You also have a copy of a memorandum which I believe Mr. Chambers prepared.

MR. ESBITT: That's not 3500 material.

MR. FRYMAN: You have that also.

MR. SABETTA: There was a question in the last case whether that's 3500 material but it is a statement he authored concerning statements allegedly made by Mr. Schwartzbaum.

MR. ESBITT: You don't have to make an admission.

MR. SABETTA: I just want to say he will testify to certain admissions made by Mr. Schwartzbaum. I assume that's what you are concerned with.

MR. ESBITT: That's right.

MR. SABETTA: Then you have that.

THE COURT: In other words, the material that is in the 3500 data which has been shared with counsel,

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2 that's what you anticipate he will testify about?

3 MR. SABETTA: Not all of it but part of it.

4 MR. ESBITT: As I understand it, he will
5 testify -- this is an official of the bank. An official
6 of the bank. This is not a union official. This is
7 nobody who has anything to do with this conspiracy or
8 joint venture. An official of the bank.

9 Presumably he is going to testify not to any
10 conversation with respect to the issues in this case but
11 apparently on some theory that the defendant may have
12 made a, some type of admission, some type of admission.
13 I don't think that that's admissible because it is not
14 relevant to any of the issues in this case, Judge.

15 THE COURT: I will take a look at it. Do
16 we have a copy of it?

17 MR. ESBITT: I have it outside.

18 MR. SABETTA: Briefly Mr. Chambers will
19 testify that Mr. Schwartzbaum admitted paying \$600 as
20 charged in the indictment which he had been arraigned
21 on the day prior to their conversation, which was this
22 indictment, or the earlier indictment, not this one
23 but the antecedent indictment.

24 MR. ESBITT: Do I gather then your
25 ruling is you will overrule my objection?

THE COURT: Well, I'm going to wait and see as it develops.

Bring Mr. Jaffee in and I will take care of this matter.

Mr. Esbitt, you have nothing further, is that correct?

MR. ESBITT: The government is still on its case.

THE COURT: No, I mean you have nothing further here in chambers?

MR. ESBITT: No, sir.

THE COURT: Let me take care of this immunity matter in your absence and then we will be right out.

(Mr. Esbitt withdrew from the robing room.)

THE COURT: Mr. Jaffee, come in and have a seat, sir.

MR. JAFFEE: Thank you, sir.

THE COURT: Your name is--

MR. JAFFEE: Harry Jaffee.

THE COURT: J-a-f-f-e-e?

MR. JAFFEE: Yes, sir.

THE COURT: You have a copy of these papers, have you not?

MR. JAFFEE: Yes, sir.

THE COURT: Have you talked it over with your attorney?

MR. JAFFEE: Yes.

THE COURT: You have gone over the papers yourself? You have gone over the papers, is that right? You have read through them?

MR. JAFFEE: I just got this.

THE COURT: Have you looked through them?

MR. JAFFEE: Not yet.

THE COURT: Have you gone over them with your lawyer?

MR. JAFFEE: On a previous occasion.

THE COURT: Take time to go through them. Start with the next page.

THE COURT: You have gone through these papers?

MR. JAFFEE: Yes, sir.

THE COURT: In fact, we have been through this procedure once before, have we not?

MR. JAFFEE: That's what I was referring to.

THE COURT: When you testified in the previous trial?

MR. JAFFEE: That's what I was referring to.

THE COURT: If you were called to testify as to matters set forth in these papers, do I understand

correctly that you would decline to so testify on the basis of your Fifth Amendment privilege against self-incrimination?

MR. JAFFEE: Yes, sir.

THE COURT: I have signed this order granting you use immunity pursuant to 18 United States Code Section 6001, and 2 and 3 and what this means is that you may not refuse to testify as to the matters set forth in the order, but that no testimony or other information compelled under this order or any information directly or indirectly derived from such testimony or information may be used against you in any criminal case, except a prosecution for perjury, giving a false statement or otherwise failing to comply with this order.

Do you understand that?

MR. JAFFEE: Yes, sir.

THE COURT: I have to warn you that pursuant to Section 1846 of Title 18 United States Code, if you refuse to testify without just cause, having been granted this immunity, this Court has the power to summarily order your confinement until such time as you are willing to testify or this proceeding comes to an end but in no event later than eighteen months. Do you understand that?

MR. JAFFEE: Yes.

THE COURT: Do you have any questions?

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2 MR. JAFFEE: I don't think so.

3 THE COURT: Fine. We will step out now and
4 proceed.

5 (In open court - jury not present.)

6 THE COURT: Gentlemen, before we bring in the
7 jury -- Mr. Esbitt and Mr. Fryman, we have a note from
8 Juror No. 10, Mrs. Voultz indicating that she has had a
9 death in the family in Selma, Alabama. Her husband's
10 brother. He died on April 1st, yesterday at twelve
11 o'clock is the information on the note. Clarence Voultz
12 is the name of the deceased. And I gather that this
13 juror would like to attend the funeral. What is your
14 wish, gentlemen?

MR. ESBITT: I have no objection to her being excused and replaced by the alternate juror.

MR. FRYMAN: The government has no objection, your Honor.

THE COURT: All right. Bring Mrs. Voultz in, Mr. Clerk.

Miss Voultz, we understand you had a death in your family, namely the loss of a brother-in-law by the name of Clarence Voultz.

JUROR NO. 10: Yes, sir. 12:00 o'clock yesterday.

THE COURT: When is the funeral?

JUROR NO. 10: Thursday.

THE COURT: You wish to attend that funeral, is that correct?

JUROR NO. 10: My husband -- if so, I would like to. That is the only brother that died.

THE COURT: You wish to attend the funeral?

JUROR NO. 10: I wish to attend, if I can.

THE COURT: We appreciate the circumstances and convey our condolences to you and you are discharged from further service in this case, and from further jury service during this term.

JUROR NO. 10: I am dismissed?

THE COURT: We thank you for your service.

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2 Bring in the jury.

3 (Jury present.)

4 THE COURT: Will alternate juror please move
5 into the seat of juror number 10, please. The alternate
6 now becomes a member of the regular jury. All right.

7 Proceed, Mr. Fryman. First the witness will stand.

8 H A R R Y J A F F E E, having been first
9 duly sworn, was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. FRYMAN:

12 Q Mr. Jaffee, are you presently employed?

13 A No, sir.

14 Q You are retired?

15 A Yes, sir.

16 Q What is your age, Mr. Jaffee?

17 A 69.

18 Q How long have you been retired?

19 A Excuse me. I will be 69 in September.

20 Q Let me withdraw my last question. For whom did
21 you work before your retirement?

22 A For the Furriers Union.

23 Q What was the name of that union?

24 A Furriers Joint Council.

25 Q What was your position with the Furriers Joint

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Jaffee - direct

261

Council?

A Business agent.

Q Can you describe briefly for the jury your duties as a business agent for the Furriers Joint Council?

A It is the job of a business agent to take up complaints that workers may make and if complaints are made, take them up with the representative of the manufacturer's association, and with the representative of the manufacturers association go to the employer against whom the complaint is being made.

Q Were you assigned to any particular companies or fur shops?

A Yes, I was.

Q Approximately how many companies?

A I don't recall exactly. Maybe about 60 or 70, something like that.

Q How many business agents were there for the union when you worked for the union?

A When I left, there might have been about eight or nine. Maybe one more or less, I don't recall.

Q Do you know a man named Charles Hoff?

A I do, sir.

Q What is Mr. Hoff's position?

A Assistant manager.

1 lhk4 Jaffee - direct 262

2 Q Of the Furriers Joint Council?

3 A Of the Furriers Joint Council.

4 Q What are his duties as assistant manager of the

5 union?

6 A Well, assistant manager would help administer the

7 affairs of the union.

8 Q Does he have any role in connection with complaints

9 brought by the union, proceedings before the impartial

10 chairman?

11 A Before the impartial chairman, did you say?

12 Q Yes.

13 A He has.

14 Q What is his role in those proceedings?

15 A His role would more or less be one in charge of

16 the complaints.

17 Q Does he present the case to the informal chairman?

18 A Yes, he does.

19 Q Does Mr. Hoff have any role concerning the union's

20 position on penalties?

21 A Yes, he has some role htere. He does.

22 Q Mr. Jaffee, are you testifying in this court today

23 under immunity granted to you by a United States District

24 Court Judge?

25 A That is correct, sir.

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Jaffee - direct

263

Q Have you informed the United States Attorney's Office that you will refuse to testify unless you receive such a grant of immunity?

A Right, sir.

Q What do you understand that grant of immunity means with regard to any perjury that you may commit while testifying?

A I understand that I am to tell the truth here.

Q And you can be prosecuted for perjury if you do not?

A I think so, yes.

Q Have you previously testified at any other trial involving the fur industry?

A Yes.

Q Did you also receive a grant of immunity in connection with your testimony at that trial?

A Yes, sir.

Q Mr. Jaffee, in your position as a business agent, were you assigned to a firm called K. J. Schwartzbaum, Inc.?

A Yes, sir.

Q Who owns that firm?

A Well, as far as I know, that would be Mr. Schwartzbaum.

Q Is he present in this courtroom here today?

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lhk7 Jaffee - direct 265

A I may not remember all the details, but I think I would remember pretty much --

Q You are generally --

A Generally I am familiar with it.

Q Was there any provision in that contract concerning a practice in the industry called contracting?

A There was.

Q What was that provision, as best you recall?

A The agreement provided that there would be no contracting.

Q Did the agreement provide for penalties with regard to contracting?

A Yes, sir.

Q Do you recall what the penalties were?

A I don't redall.

Q Were there fines provided?

A Yes, penalties, fines.

Q Was suspension from the contract another penalty?

A Under certain conditions, I think there was something to that effect.

Q Are you familiar with the practice of importing?

A Yes.

Q What do you understand that practice to be?

A That firms were not to import.

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Jaffee - direct

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Q And there was a provision in the contract --

A I think there was something within the contract to that effect.

Q Were there also penalties in the contract with regard to the practicing of importing?

A I think there was.

Q What was the role of a business agent, Mr. Jaffee, in enforcing these prohibitions in the contract, particularly with regard to the practice of contracting?

A The role of the business agent was to see to it that the no contracting provision was lived up to. That's the sometotal of the thing.

Q You said you worked with a representative of the Manufacturers Association in connection with the Schwartzbaum shop, is that correct?

A That is correct.

Q What was the name of that representative?

A Jack Glasser.

Q Did you work with Mr. Glasser there in the period 1968, '69?

A I think so.

Q How frequently did you see Mr. Glasser?

A Maybe a few times a week, more or less.

Q Did you visit the Schwartzbaum shop with him on

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2 A At least once or twice in 1968 and the same for
3 '69.

4 Q What were the circumstances, Mr. Jaffee, sur-
5 rounding these payments that you have described that Mr.
6 Glasser made to you?

7 A Well, he told me on one --

8 MR. ESBITT: Excuse me, if your Honor please.
9 Could we have the witness identify the time and place of the
10 first conversation that he is referring to?

11 THE COURT: Just one moment, please. First of
12 all, yes, in answer to your question, but, just a moment.

13 (Pause.)

14 THE COURT: Ladies and gentlemen, you have heard
15 testimony from this witness as to what was told to him,
16 according to his statement, by Mr. Glasser with reference
17 to where he got the money. I am receiving this evidence,
18 subject to connection, which means that at a later point in
19 the trial, on the basis of other evidence which may or may
20 not be received, may or may not be offered, I will tell you
21 what my ruling is as to whether or not it has been connected.
22 That does not mean that I make any determination about the
23 defense. It simply means that I will be telling you
24 whether or not you may receive the evidence and consider it
25 for such determination as you choose to make.

2 Go ahead, Mr. Fryman.

3 Q Mr. Jaffee, let me limit my question, focusing
4 on the first payment that you recall from Mr. Glasser where
5 he identified the payment as coming from Schwartzbaum. What
6 were the circumstances surrounding that payment?

7 MR. ESBITT: If your Honor please, I have asked
8 for the time and place, and your Honor said I may have that
9 information.

10 THE COURT: Fix the time and place.

11 A Are you asking me to do that now?

12 Q Yes. Mr. Esbitt and Judge Pierce have asked that
13 in your answer, be as specific as you can recall with regard
14 to the time and place for this payment and the circumstances
15 surrounding the payment.

16 A Well, initially I can best recall that the actual
17 first payment was -- the first giving the money was
18 possibly sometime in 1968 after we came down from a visit
19 to the shop of Schwartzbaum.

20 MR. ESBITT: May we have the month of the year,
21 your Honor?

22 THE COURT: See if you can fix it more specific-
23 ally.

24 Q Do you recall the month of 1968, if it was 1968?

25 A I am sorry, I cannot recall the month, but I think

2 it was 1968.

3 Q With regard to the place, you said after you came
4 down from the shop?

5 A Yes.

6 Q So where, then, was the place of this payment?

7 A The lobby of the building.

8 Q Of the building where Mr. Schwartzbaum's shop
9 is located?

10 A Yes, sir.

11 Q What were the circumstances surrounding this
12 payment from Mr. Glasser to you which he identified as
13 coming from Mr. Schwartzbaum?

14 A Sometime prior to this visit Mr. Glasser spoke to
15 me and said words to the effect, as best I can recollect,
16 this is going back some years now, that there will be
17 occasions when there could be some money that he would give
18 me from the shop of Schwartzbaum, and carried the conversation
19 further to the extent that the firm gives out work, and he
20 says it is no big deal involved here. He says just
21 forget about it, and that's about all I can recollect
22 right now.

23 Q You say he used the phrase the firm gives out work?

24 A Yes.

25 Q What did you understand that phrase to mean?

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Jaffee - direct

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A That phrase means that the firm is giving out contracting.

Q What did he ask you to do with regard to this?

A Just to look away.

Q And then he paid you this money?

A He gave me that money.

Q What did you say to him?

A Well, at that time, it was part of the conversation, I didn't accept it at that time.

THE COURT: Did or did not?

THE WITNESS: I did not accept it. In the beginning, I am trying to make the point, your Honor, that I didn't accept it right away because I had some feelings about it. But after a time, then I did accept it.

Q And this is the first payment that you recall that you are describing?

A Yes.

Q You say you believed there were other payments from Mr. Glasser which he identified as coming from Mr. Schwartzbaum?

A Well, I think there was I think one or two in 1968 and possibly one or two in 1969.

Q What were the circumstances surrounding those payments?

2 MR. ESBITT: I'd like to have the payments
3 identified one at a time and we would like to have the wit-
4 ness specify when it was in 1968 before we get to 1969.

5 Q As best you recall them, Mr. Jaffee, first any
6 other payment in 1968, do you recall the specific month?

7 A No, I don't. I can't recall.

8 THE COURT: Or season or portion of the year.

9 THE WITNESS: Well, it could have been --

10 MR. ESBITT: I object to that, if your Honor
11 please.

12 THE COURT: We don't want you to guess. We
13 do want your best recollection, if you can recall.

14 THE WITNESS: My best recollection could be
15 possibly the last six months of the year. I say that
16 because that's when the trade was generally busy.

17 THE COURT: Let us see what you are saying. Are
18 you saying that the first payment that you testified about
19 which you say occurred in the lobby took place in the last
20 six months of 1968, as best you can recall? Is that the
21 payment you are talking about now?

22 THE WITNESS: Yes, sir.

23 Q What were the circumstances surrounding that
24 payment?

25 A This was after a visit to the shop of Schwartzbaum

2 and we came downstairs.

3 Q What were you asked to do in response to that
4 payment?

5 A Just to look away. He told me in the initial
6 talk, he says "Forget it."

7 Q Forget about contracting in the Schwartzbaum
8 shop?

9 A That's right.

10 Q You believe there were also payments, at least one
11 or more payments in 1969?

12 A Possibly. I can't recall the months. I am just
13 going by -- just by memory, that's all.

14 Q All of the payments that you received from Mr.
15 Glasser which he identified as coming from Mr. Schwartzbaum,
16 did you understand that Mr. Glasser was giving each of these
17 payments to you to achieve the same purpose?

18 MR. ESBITT: I object to that, if your Honor
19 please. I think the witness again --

20 THE COURT: Sustained.

21 Q What did you understand was the --

22 MR. ESBITT: I object to asking the witness what
23 he understood.

24 THE COURT: Sustained.

25 MR. ESBITT: I think the witness is required to

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lhk Jaffee - direct 274

testify --

THE COURT: Sustained.

Q Did Mr. Glasser inform you as to each of these payments --

MR. ESBITT: I object to the form of the question, your Honor.

THE COURT: Overruled.

MR. FRYMAN: Would the reporter read back the first half of that question?

(Record read.)

Q -- of the reason the payment was being made to you?

A He did.

Q And what was that reason?

MR. ESBITT: Excuse me, I'm sorry. I didn't hear the question.

(Record read.)

MR. ESBITT: If your Honor please, I must object again.

THE COURT: You want the conversation?

MR. ESBITT: Of course. I don't want counsel to lead the witness.

THE COURT: Sustained in the sense you should ask for the counsel. It isn't leading, counsel. Sustained as

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lhk Jaffee - direct
to form. Go ahead.

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Q Mr. Jaffee, focus on the statement that Mr. Glasser made to you with regard to the payment you recall in '69. What statement did he make to you?

MR. ESBITT: May we have the time and place again, Judge?

MR. FRYMAN: I believe he has already testified, your Honor, he can't recall the exact time.

THE COURT: Yes, he has. Perhaps he recalls the place.

Q Do you recall where the payment was made to you?

A Downstairs --

MR. ESBITT: If your Honor please, my recollection of the testimony, I made a note, that this witness did not say with specificity that he actually received any payments in 1969.

THE COURT: No, he has testified, counsellor, that he on one or two occasions he believes he received money in 1969.

MR. ESBITT: Then, your Honor, he was asked and he said possibly, possibly in 1969.

THE COURT: I am overruling your objection. Try to fix the place with reference to these various alleged occasions, counsel.

2 Q All of the payments you recall, Mr. Jaffee, from
3 Mr. Glasser, were they all made to you in the same location?

4 A Yes, sir.

5 Q Where was that location?

6 A My memory is downstairs in the building.

7 Q In the building where Mr. Schwartzbaum's shop
8 is located?

9 A Correct.

10 Q Focusing on the payment you recall in 1969, what
11 did Mr. Glasser say when he gave you that payment?

12 A He just said that this is from Schwartzbaum.

13 Q Did he say what you were to do in response to that
14 payment?

15 A Well, it was understood what I was to do.

16 MR. ESBITT: I object and ask that it be stricken
17 from the record.

18 THE COURT: Just a moment. Sustained as to the
19 form of the question.

20 Q Mr. Jaffee, was your conduct regarding the prac-
21 tice of contracting in the Schwartzbaum firm the same or
22 different after each of these payments from Mr. Glasser?

23 A I don't recall any change in my conduct.

24 Q You continued to look the other way?

25 A I did.

2 MR. ESBITT: I object to the form of the question,
3 your Honor. He has received an answer to the question --

4 THE COURT: Overruled. Overruled. Go ahead.

5 Q Mr. Jaffee, did you ever receive any other pay-
6 ments from Mr. Glasser which he identified as coming from
7 any other fur manufacturers?

8 MR. ESBITT: Objection, if your Honor please.
9 Irrelevant.

10 THE COURT: Sustained.

11 Q Mr. Jaffee, these monies you say you received
12 from Mr. Glasser with regard to the Schwartzbaum firm, did
13 you report those monies on your income tax?

14 A I don't recall. I don't think I did. I didn't
15 realize at the time, but I certainly understand it now.

16 Q What is your best recollection now as to whether
17 or not you reported the money on your income tax --

18 A I don't recall whether it was reported. I don't
19 recall.

20 MR. FRYMAN: No further questions.

21 THE COURT: Cross examine.

22 CROSS EXAMINATION

23 BY MR. ESBITT:

24 Q Mr. Jaffee, you testified that you had these
25 meetings with Mr. Glasser in the building that Mr. Schwartzbaum

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Jaffee - direct

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had his office in, is that correct?

A Sir, I don't know what you mean by meetings.

Q You had some meetings with Mr. Glasser at which you say he gave you money?

A If you want to call that a meeting, I didn't qualify it as such.

Q What do you call it? You saw Mr. Glasser?

A Yes.

Q And you say he gave you some money?

A Yes.

Q Is that right?

A Right.

Q And he gave you the money where?

A Downstairs in the building.

Q What building?

A Of Mr. Schwartzbaum.

Q What building was that?

A 224 West 30th Street.

Q Are there other fur manufacturers in that building?

A There are.

Q A great many?

A Quite a number.

Q A number of them are your -- are firms for which you are the business agent?

1 lhk

Jaffee - direct

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2 A Yes.

3 Q You have testified that you received immunity?

4 A Excuse me a moment, please. Do I look at you or
5 look at the jury?

6 Q I'm sorry, I am going to make it easier for
7 you. I am going to move over here so you could look at me
8 and the jury at the same time.

9 Is that better?

10 A Thank you.

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2 Q Now, you received immunity in order to testify
3 in this case, did you not?

4 A Yes, sir.

5 Q When did you receive immunity? Today?

6 A Yes, sir.

7 Q Just before you appeared on the witness stand?

8 A Yes, sir.

9 Q What crimes had you committed prior to testifying
10 today?

11 MR. FRYMAN: Objection.

12 THE COURT: Sustained.

13 MR. ESBITT: I have to approach the bench on
14 this, your Honor.

15 THE COURT: No. You may inquire, but not
16 in that fashion.

17 Q Well, you did not want to testify without immunity,
18 is that correct?

19 A Yes, sir.

20 Q And the reason you did not want to testify without
21 immunity is because you were concerned that if you did not
22 get immunity your testimony could be used against you in a
23 criminal proceeding, is that not a fact?

24 A I assumed that's what it means. I can't explain
25 it like that, but I assume that's what it means.

1 LZjq 2

Jaffee-cross

2 Q What did you do that gave you concern so that you
3 asked for immunity?

4 A The only think I can see that I did was to accept
5 these moneys from Mr. Glasser.

6 Q Anything else?

7 A I don't recall anything else.

8 Q Were you interviewed by Mr. Fryman before you
9 testified today?

10 A I don't know what you mean by "interviewed." I
11 spoke to him, if that's what you mean.

12 Q When did you speak to him last?

13 A Today.

14 Q What time? During the lunch hour?

15 A Lunch hour, yes.

16 Q How long was your conversation with Mr. Fryman?

17 A Not very long.

18 Q What is that, ten, fifteen minutes?

19 A I don't think so.

20 Q Shorter than that?

21 A Yes, sir.

22 Q And that conversation had to do with your testi-
23 mony today, is that correct?

24 A Something about refreshing my memory, something
25 like that.

THE COURT: Excuse me one minute, counselor.

(Pause)

Q Now, I think you were testifying that you had this little meeting with Mr. Fryman to -- he wanted to refresh your recollection, is that right?

A Something like that.

Q Something like that?

A Yes.

Q And did he refresh your recollection by reminding you of things you had testified to before?

A Not today, no.

Q What did he refresh your recollection about?

A We were just talking about --

Q A little louder. I am a little deaf.

A We were just talking about the case.

Q How was he refreshing your recollection?

A I don't remember exactly, but he asked me to remember what I testified to.

Q And did you remember when you spoke to him at noon time today what you had testified to two months ago?

A I remembered more or less, yes. Not exactly, but I remembered more or less.

Q Did he show you a copy of your testimony in the trial two months ago or a month ago?

1 LZjg 4

Jaffee-cross

2 A Sometime ago. Not today.

3 Q Not today?

4 A No.

5 Q So that there were other occasions on which you
6 met with Mr. Fryman for the purpose of preparing you to
7 testify today, is that correct?

8 A I don't know if that's the sum total of the
9 conversation, but we had some talks, yes.

10 Q You had some talks. How many talks did you have
11 with Mr. Fryman before today?

12 A A couple.

13 Q Sir?

14 A A couple.

15 Q And how many are "a couple"? Two or three?

16 A Two, possibly.

17 Q Two before today?

18 A Yes.

19 Q When was the last one before today?

20 A Possibly last week.

21 Q Do you remember when?

22 A I don't recall the date.

23 Q Was it Tuesday of last week?

24 A I can't recall the date.

25 Q Where do you live, Mr. Jaffee?

1 LZjq 5

Jaffee-cross

2 A In Brooklyn.

3 Q But it was some day last week, as best you can
4 recall?

5 A Yes, sir.

6 Q And you had a meeting with him? Or was this a
7 telephone conversation?

8 A No. I was talking to him personally.

9 Q Where was that, in his office?

10 A In his office.

11 Q Was Mr. Sabetta present?

12 A I think he was.

13 Q And how long was that meeting last week?

14 A Maybe twenty minutes, maybe a few minutes more or
15 less. I don't know.

16 Q What was the conversation about last week? Were
17 they trying to refresh your recollection in preparation for
18 your testimony today?

19 A Well, I don't know exactly what the purpose --

20 Q Tell us what happened at the meeting.

21 A They just spoke about the case, that's all.

22 Q Did they show you anything to refresh your
23 recollection?

24 A Might have showed me the record of the testimony.

25 Q From the last trial?

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A Yes.

Q And you read it?

A I looked at it, yes. I wouldn't say I read it thoroughly. I just scanned over it.

Q And that refreshed your recollection?

A Somewhat.

Q You say you had one more meeting before that?

A Some time ago.

Q How long ago?

A This would be maybe three or four weeks ago, something.

Q By the way, at these three meetings that you had did Mr. Fryman take any notes?

A I don't recall.

Q And did Mr. Sabetta take any notes?

A I don't recall.

Q Do you have a good memory, Mr. Jaffee?

MR. FRYMAN: Objection, your Honor.

THE COURT: Overruled.

A I would say that I used to have a good memory, but I don't think it's really good any more at this stage of the game. I'm 69 years old.

Q So you would say that your memory today is not very good, is that a fair statement?

1 LZjg 7

Jaffee-cross

2 A I won't say it's not very good. It's possibly
3 not very accurate.

4 Q Not very what?

5 A Accurate.

6 Q Now, I'm going to ask you a series of questions
7 with respect to your prior testimony. You looked over the
8 testimony, did you not?

9 A I said I scanned it.

10 Q Scanned it, all right.

11 Is it not a fact, Mr. Jaffee, that when you were
12 questioned by Mr. Sabetta -- and he did question you in the
13 last trial, did he not?

14 A Yes.

15 Q When you were on the witness stand before Judge
16 Pierce?

17 A Yes.

18 Q And when Mr. Sabetta asked you, "Did there come a
19 time when Mr. Glasser gave you any money in connection with
20 the firm of Schwartzbaum Furs?", you said, "I'm not too sure
21 about the years, I'm not too sure."

22 Did you not testify that way in the last trial?

23 A I don't recall if that was my testimony.

24 Q I will ask you, reading from the record, starting
25 at page 984, were you not asked these questions and did you

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Jaffee-cross

you not give these answers, questions by Mr. Sabetta, at the last trial:

"Q Did there ever come a time when Mr. Glasser gave you any money in connection with the firm of Schwartzbaum Furs?

"A At what time are you referring to?

"Q I am focusing about the period '68, '69.

"A Well, I'm not too sure about the year, but as best as I can recollect it was somewhere in that year, possibly a year earlier, maybe '67. I'm not too sure."

Were you asked those questions and did you give those answers?

A I think I was asked those questions.

Q Further down, on line 12, were you asked this question and did you give this answer:

"Q Do you recall approximately when that took place?

"A I don't recall too clearly."

A Sir, I don't know what you are referring to right now.

Q I will read the prior questions for you. Line 6:

"Q Did there come a time when at the Schwartzbaum firm you were replaced by another

business agent?

"A Yes.

"Q Did Mr. Zeibel take over for you?

"A Yes.

"Q Do you recall approximately when that took place?

"A I don't recall too clearly."

Were you asked those questions and did you give those answers?

A Yes, I was asked the question.

Q Did you give those answers that I just read to you?

A I don't recall those answers, but I think that if the question was when Mr. Zeibel took over --

Q That's right.

A -- obviously it was after I left the industry, I would think.

Q Well, was it not your answer, "I don't recall too clearly."? Didn't you so testify a month ago before Judge Pierce or when asked this question by Mr. Sabetta?

A I don't recall that.

Q You don't recall that answer?

A I don't recall.

Q And were you asked this question, line 14:

"Q Do you know how long before your retirement that might be? Would it have been possibly a year or two years?

"A Possibly a couple years. I don't recall.:

A When Mr. Zeibel took over the shop?

Q Yes.

A I can --

Q Did you not answer to Mr. Sabetta's question, "I don't recall."?

A Sir, may I?

Q Sure.

A I am retired. I am going by what I remember very clearly. It was an outstanding event to me --

Q I am sorry to interrupt you, Mr. Jaffee. The question that I asked you was, in the prior trial were you not asked these questions and didn't you give these answers. Didn't you give the answer "I don't recall."?

A I might have given the answer. I am trying to explain it, so to speak.

THE COURT: Don't explain it yet, Mr. Jaffee. Counsel is simply asking you if you remember now being asked those questions then and giving those answers at that time. He is not yet asking for an explanation.

THE WITNESS: I remember some, but I don't remember exactly, but --

Q And were you not asked these following questions and did you give the following answers, 985 of the record, line 25, questions by Mr. Sabetta:

"Q I am asking you now, with respect to the Schwartzbaum firm that we are talking about, about how much you received on this occasion in '68 or '69.

"A My recollection is about \$50 on these occasions. Now, I could be wrong. It's not very clear in my mind."

Was that your answer?

A Sounds like my answer.

Q And further down on that page, reading from line 10, were you not asked the following question and did you not give the following answer:

"Q Now, on this occasion in '68 or '69 when you got money from Mr. Glasser, do you remember where it was that you received the moneys?

"A Possibly in the street. I don't remember too clearly."

Were you not asked that question and did you

1 LZjg 12

Jaffee-cross

2 not give that answer?

3 A I recall some -- something like that, but I
4 might have been referring to where the conversation took
5 place prior.

6 Q Well, the question that was asked of you by Mr.
7 Sabetta was, "When you got money from Mr. Glasser, do you,
8 remember where it was that you received the moneys?" Your
9 answer was, "Possibly in the street. I don't remember
10 too clearly."

11 Weren't you asked that question by Mr. Sabetta
12 and you gave that answer?

13 A Possibly, yes.

14 Q Now again, reading from page 988, were you not
15 asked the following questions and gave the following answers,
16 referring to a payment:

17 "Q It could have been in '68?

18 "A It's very possibly. I am not too clear
19 on these dates."

20 Were you asked that question and gave that
21 answer?

22 A Yes.

23 Q You were a business agent for how many fur manu-
24 facturers from the Association?
25

1 LZjq 12

Jaffee-cross

2 A What time are you referring to, sir.

3 Q '68, '69, '67.

4 A About sixty, give or take five or ten.

5 Q Was it not the practice for many of the fur
6 manufacturers to give gifts to their business agents at
7 Christmas time?

8 MR. FRYMAN: Objection.

9 THE COURT: Your point being?

10 MR. FRYMAN: The witness is not competent.

11 It hasn't been established that he is competent to testify
12 as to the practice in this area. That's the first point.

13 The second point is that it seems irrelevant
14 to this proceeding.

15 THE COURT: Sustained.

16 MR. ESBITT: Your Honor's ruling was what?

17 THE COURT: Sustained.

18 Q Did you receive from the manufacturers, from any
19 of your manufacturers during '67, '68 and '69 any Christmas
20 gifts?

21 MR. FRYMAN: Objection, your Honor. Also --

22 THE COURT: Overruled.

23 Q Did you, Mr. Jaffee?

24 A Would you repeat that question, please?

25 MR. ESBITT: Mr. Reporter?

1 LZjg 13 Jaffee-cross

2 THE COURT: Read it back.

3 (Question read)

4 A Possibly. Possibly.

5 Q Cash gifts?

6 A Yes.

7 Q And what about the Schwartzbaum firm? Did you
8 receive any Christmas gifts from the Schwartzbaum firm?

9 A No, sir.

10 Q Never?

11 A No, sir.

12 Q How long have you known the Schwartzbaum firm?

13 A I know the firm quite some years.

14 Q Including the father?

15 A Yes, including the father.

16 Q And Mr. Schwartzbaum?

17 A I know him quite some years.

18 Q Many years?

19 A Yes.

20 Q And did you know Mr. Schwartzbaum's reputation in
21 the community for honesty and integrity and fair dealing?

22 A Well, I don't know what his reputation in the
23 community is.

24 Q In the fur community?

25 A In the fur community?

1 LZjg 14

Jaffee-cross

2 Q You didn't know him socially, did you?

3 A No.

4 Q In the community in which you operated and Mr.
5 Schwartzbaum operated, did you know his reputation?

6 A Yes.

7 Q And what was his reputation for honesty, integrity
8 and fair dealing?

9 A Well, I would say that he was a decent sort of a
10 man.

11 Q Would you say that he had a good reputation for
12 honesty and integrity and fair dealing?

13 A I never heard anything to the contrary.

14 Q Did you ever ask a single fur manufacturer for
15 money during all the years that you worked for your union?

16 A No, sir.

17 Q Never did?

18 A No.

19 Q Did you ever ask Jack Schwartzbaum for money
20 during all the years that you were in the union?

21 A No, sir.

22 Q Did you ever ask Mr. Glasser for money during all
23 the years that you were in the fur union? Did you ever
24 ask him for money?

25 A I never asked him for money.

LZjq 15

Jaffee-cross/redirect

Q And, as a matter of fact, when the first time he offered you money you refused it, is that not true?

A Right.

Q And he had to persuade you to take it, is that not true?

A Right.

MR. ESBITT: No further questions.

THE COURT: Redirect.

MR. FRYMAN: Would you mark this document as the next Government document for identification?

(Government Exhibit 8 was marked for identification.)

REDIRECT EXAMINATION

BY MR. FRYMAN:

Q Mr. Jaffee, Mr. Esbitt asked you several questions about your testimony at the prior trial and he referred to your answers regarding certain years and your recollection of the specific year in which the payments were made.

I show you a document which has been marked as Government Exhibit 8 for identification and I ask you if I showed you that document in our meeting after the prior trial.

A Yes, you did.

Q Now, had you seen that document before your testimony in the prior trial?

A No, sir.

Q Are your initials on that document?

A Yes, sir.

Q What fur manufacturer does that document pertain to?

A Schwartzbaum Furs.

Q Is there a date on that document?

A You are referring to this, May '69?

Q There is a date on the document?

A Yes.

Q What is the date?

A May 1969.

Q Did that document refresh your recollection as to the year in which you received payments from Mr. Glasser with regard to the Schwartzbaum firm?

A It was helpful.

Q And what years do you now recall that you received those payments?

MR. ESBITT: If your Honor please, the document has been shown to the witness and I think it should be taken away from the witness and let's find out whether or not he can testify without the crutch which Mr. Fryan is giving

1 LZjg
2 him.

Jaffee-redirect

3 THE COURT: I agree.

4 Q Does that document --

5 THE COURT: Take it from him, counsel. If he
6 has had an opportunity to scan it or read it, take it away
7 from him.

8 Counsel, you may see it.

9 THE WITNESS: Your Honor --

10 THE COURT: Just a moment.

11 Q Does that document refresh your recollection as
12 to when you left the Schwartzbaum firm?

13 MR. ESBITT: He was never employed by the
14 Schwartzbaum firm.

15 Q Does that document refresh your recollection as to
16 when you ceased serving as business agent for the Schwartz-
17 baum firm?

18 A Well, it might have been that date there or maybe
19 after that.

20 Q What is this document, Mr. Jaffee?

21 A I was just about to say --

22 MR. ESBITT: If your Honor please, I object
23 to the identification of this document. It is not in
24 evidence and it was used, submitted to the witness, to
25 refresh his recollection.

1 THE COURT: It was so used. Now counsel
2
3 apparently seeks to continue.

4 Overruled.

5 THE WITNESS: Your Honor, may I --

6 THE COURT: Just wait for the questions.

7 Go ahead, counsel.

8 THE WITNESS: I just wanted to say, I just
9 looked at the date. I didn't familiarize myself with all
10 the other writing there.

11 MR. FRYMAN: May I show the document again to
12 the witness?

13 THE COURT: Yes.

14 MR. FRYMAN: Your Honor, the witness asked if
15 he could have a glass of water. Would that be possible?

16 THE COURT: Yes.

17 MR. ESBITT: Does your Honor think that this
18 would be an appropriate time for the afternoon break?

19 THE COURT: I suppose so, yes.

20 MR. FRYMAN: I think we are near conclusion
21 with this witness, your Honor.

22 THE COURT: Are we? All right, we will continue.

23 Q What is that document, Mr. Jaffee?

24 A This document represents a report of complaints
25 that business agents filed from time to time.

LZjg

Jaffee-redirect

Q And does that document contain your initials?

A It looks like my initials, yes.

MR. FRYMAN: The Government offers Exhibit 8 for identification into evidence.

MR. ESBITT: No objection.

THE COURT: Exhibit 8 is received in evidence.

(Government Exhibit 8 for identification received in evidence.)

Q Now, Mr. Jaffee, once again referring to your testimony at the prior trial, did you testify with regard to payments from any manufacturers other than Mr. Schwartzbaum?

A Yes, I did.

MR. FRYMAN: No further questions, your Honor.

MR. ESBITT: May I have that last exhibit, please?

THE COURT: Recross

RE CROSS EXAMINATION

BY MR. ESBITT:

Q Now, this Government Exhibit 8 for identification which you have just identified, is it in your handwriting?

A It looks like my handwriting, sir.

1
2 Q Well, you initialed it down at the bottom
3 as the business agent?

4 A Yes.

5 Q Would you please look at the rest of the
6 document and tell us whether that's also in your handwriting?

7 A yes, sir. It looks like my handwriting.

8 Q This is a complaint, is it not?

9 A It is a copy of a complaint.

10 Q And you initiated this complaint?

11 A Not necessarily.

12 Q Well, you initialed the bottom of it?

13 A I initialed the bottom.

14 Q And it is in your handwriting.

15 A You see, I am trying to speak a little louder
16 for the benefit of the jury.

17 Q My question to you is, first you initialed
18 this?

19 A Yes, sir.

20 Q And it is in your handwriting?

21 A It looks like my handwriting, yes.

22 Q And isn't it a fact that you initiated this
23 complaint by filling it out and initialing it?

24 A No. If you will notice, this writing is not
25 mine. The nature of the complaint is not mine.

- 2 Q Nature of the complaint is not yours?
- 3 A Correct.
- 4 Q But the rest of it is yours?
- 5 A That's right.
- 6 Q Did you note initiate this complaint?
- 7 A Possibly not.
- 8 Q Are you positive or --
- 9 A It doesn't look that way because it is not --
- 10 MR. FRYMAN: Objection, asked and answered.
- 11 MR. ESBITT: I think the witness ought to
- 12 be permitted to answer the question.
- 13 THE COURT: So far the state of the record is
- 14 the witness says -- put your question. Go ahead. Answer
- 15 the question.
- 16 Q Did you not initiate this request, this
- 17 complaint?
- 18 A I can't recall it.
- 19 Q You have no recollection at all?
- 20 A Of initialing this complaint?
- 21 Q Initiating.
- 22 A Rather initiating this complaint?
- 23 Q Yes.
- 24 A No, I don't. May I explain?
- 25 Q All right.

1 lzv 2 Jaffee-cross

2 A Because this writing, nature of the complaint,
3 is not that of mine.

4 Q What is the nature of the complaint?

5 A The nature of the complaint is buying imports.

6 Q That is not in your handwriting?

7 A It is not even handwriting. It is printing.
8 Maybe it is half handwriting, half printing, sir. This here.

9 Q When you say it is printed, you don't mean it
10 is printed, you mean that instead of being written out it
11 is spelled out in that form? It is not a printed form,
12 is it?

13 A No, I didn't say it was.

14 Q Someone has written it in, but they have
15 just put it letter by letter, is that right?

16 A And that is not my writing.

17 Q It is not your writing?

18 A Or printing.

19 Q You're not sure whether or not you initiated
20 the complaint?

21 A I would say I didn't initiate this complaint.

22 Q But you processed the complaint, didn't you?

23 A Correct, sir.

24 Q If I understand your testimony, prior to this
25 time Glasser had been paying you money to look the other

1 lhv 3

Jaffee-cross

2 way with respect to any complaints that might come up with
3 respect to Schwartzbaum, isn't that true?

4 A That's not true, sir.

5 Q That's not true?

6 A No, sir.

7 Q Didn't you testify from Mr. Fryman's questioning
8 of you that you were given the money to look the other way --

9 A If you please, sir, about contracting.

10 Q Only about contracting?

11 A Only about contracting.

12 Q You mean the so called payoff was only for
13 contracting?

14 A Correct.

15 Q Not for importing?

16 A That's right.

17 QA And so when this form was submitted to you,
18 you just filled it out and let it go through, right?

19 A Well, it is not a question of just filled it
20 out. There is other things attached to this complaint,
21 sir.

22 Q What you're telling us is that somebody filled
23 out this complaint form "Buying Imports" and gave it to you,
24 is that right?

25 A Yes.

lhv 4

Jaffee-cross

Q When you got that, you knew that it was a complaint against Mr. Schwartzbaum, did you not?

A Yes, sir.

Q According to your testimony, you had been receiving money from Mr. Glasser for a form of protection for Mr. Schwartzbaum, wasn't that your testimony?

A Only for contracting.

Q When you saw this complaint come in and put on your desk, did you get in touch with Mr. Glasser and say "Look, Jack, I know you have been paying me off to take care of Schwartzbaum, but now we have a complaint on our desk," did you?

A Well, it is not exactly the way you put it, sir.

Q Did you call Glasser after the complaint came in?

A I didn't exactly call him. I went to his place of business, his office.

Q You went to his office?

A That's the procedure.

Q Before you filled out the form and when you got this so called complaint about imports, did you get in touch with Mr. Glasser?

A I don't believe so.

lhv 5

Jaffee-cross

MR. ESBITT: I have no further questions.

MR. FRYMAN: No redirect, your Honor.

THE COURT: Step down.

(Witness excused.)

THE COURT: Mr. Fryman, what is your wish?

MR. FRYMAN: Your Honor, there was an exhibit that Mr. Esbitt obtained from us yesterday which has been introduced as Defendant's Exhibit E, and I would like to read this exhibit to the jury, and then we are prepared to call our next witness.

If your Honor would like to take a break, we can do this now.

THE COURT: Why don't you read your exhibit and then we will take a few minutes recess. As I recall it, there was some question at the time as to whether it could be offered as marked as Government's Exhibit as well. Do you have any requests with respect to that?

MR. FRYMAN: No, your Honor. There is a government exhibit marker on it, but it has been admitted into evidence as Defendant's Exhibit E, and we will just read it in as such.

This is a letter, the letterhead is "Conference Committee of the Fur Industry, Office of the Impartial Chairman, 259 West 30th Street, New York, New York 10001."

1 lhv 6

2 It is headed "Case nubmer A-5902, in the matter
3 of K.J. Schwartzbaum, Inc., 224 West 30th Street, New York,
4 New York."

5 (Mr. Fryman read Defendant's Exhibit E to the
6 jury.)

7 THE COURT: Madam Forelady, lead the jury out.
8 Please do not discuss the case among yourselves or with
9 anybody else. We will take a ten minute recess.

10 (Recess taken.)

Take 5 p.m1

lzv

2

THE COURT: Yes, sir.

3

MR. FRYMAN: The government calls Albert

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Chambers.

5

A L B E R T C H A M B E R S, called as a

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witness on behalf of the government, being first

7

duly sworn, testified as follows:

8

THE COURT: Proceed.

9

DIRECT EXAMINATION

10

BY MR. FRYMAN:

11

Q Mr. Chambers, by whom are you employed?

12

A At the present time by the New Jersey Bank

13

at Passaic, New Jersey.

14

Q What is your position at that bank?

15

A Assistant vice president, Loan Review officer.

16

Q How long have you been employed by that bank?

17

A Since October 1, 1973.

18

Q Were you previously employed by another bank?

19

A I was.

20

Q What bank was that?

21

A That was the Chase Manhattan Bank.

22

Q When did you leave the Chase Manhattan Bank?

23

A I left there on terminal leave on September 28,

24

1973, and official retirement date, January 31, '74.

25

Q How many years had you worked for the Chase

1 lzv

Chambers-direct

2 Bank before you left?

3 A 43 years.

4 Q What was your position with the Chase Bank at
5 the time you left?

6 A Second vice president.

7 Q Were you assigned any particular branch?

8 A Yes. I was at the Times Square branch at 41st
9 and Seventh Avenue.

10 Q What was the nature of your duties with the
11 Chase Bank when you served in that branch in 1973?

12 A I was the credit and loan officer, assistant
13 to the branch executive.

14 Q Were particular outstanding loans assigned
15 to you or particular companies that had outstanding loans
16 assigned to you?

17 A Yes. Approximately 225 loans.

18 Q Was one of those companies the firm of K.J.
19 Schwartzbaum, Inc.

20 A It was.

21 Q Who owns that firm?

22 A Mr. Karl Schwartzbaum.

23 Q Do you know Mr. Schwartzbaum?

24 A I met him, I believe, twice.

25 Q Is he in the courtroom here today?

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Chambers-direct

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MR. ESBITT: Conceded, your Honor.

THE COURT: All right.

Q Now, when were you assigned to the Schwartzbaum firm at the Chase Bank?

A Approximately December in '72.

Q Did the firm have any outstanding loans with the Chase Bank at that time?

A They did have a loan initiated by another officer and brought up to that branch.

Q Approximately what amount was that loan?

A It was \$140,000 at that time.

Q Did that outstanding loan increase during 1973?

A In January '73 Mr. Schwartzbaum had requested additional amount to cover inventory he was purchasing.

Q Was additional money paid to him?

A It was granted, yes.

Q What was the amount of that loan?

A It was somewhere about \$240,000. The total loan came to about \$400,000.

Q What was the amount outstanding at the end of March, 1973?

A It would have been \$400,000, sir.

Q In late March or April, 1973, Mr. Chambers, did you learn of an indictment against Mr. Schwartzbaum?

1 lzv

2 A Yes. It was appearing in the papers.

3 Q And did you read the newspaper article?

4 A Yes, sir.

5 Q What did you understand was the nature of the
6 proceeding?

7 A That he and several others had been indicted
8 in connection with some alleged payoffs to union officials.

9 Q After reading that newspaper article, did you
10 hear from Mr. Schwartzbaum?

11 A He called me on April the 2nd to ask I stop
12 in his office the next morning to discuss the articles
13 and another matter so we could get all the facts from
14 him.

15 Q Was this telephone conversation a brief one?

16 A Very brief, yes.

17 Q Just to arrange a meeting the next day?

18 A That's all.

19 Q And did you go to his office the next day?

20 A Yes. I went down there next morning and met
21 with Mr. Schwartzbaum.

22 Q Where did you meet with him?

23 A I met in his quarters and we went into a small
24 office that he had there and sat down.

25 Q What did Mr. Schwartzbaum say to you in that

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Chambers-direct

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meeting?

A He said that in view of that newspaper article and the other matter, he thought we were entitled to the facts surrounding it and wanted to assure us that it had no adverse affect on his company, whatever the outcome might be.

Q Did he say anything else?

A We had quite a discussion and it led up to the fact; he mentioned that he had paid \$600, another individual \$150, and the total payments involved were \$1,200.

Q Did you take any notes during that meeting?

A Yes, I took notes relative to the amounts mentioned only.

Q After that meeting, did you make any sort of other record of the meeting?

A Yes. On return to the office I dictated a memorandum outlining the whole discussion.

Q Did you make any revisions in the memorandum?

A I dictated rough the first time. Edited it and then had the girl retype it in final form.

Q I show you Government's Exhibit 4 for identification and ask you to identify that document.

A Yes, this is the document I dictated. A copy

1 lzv

Chambers-direct

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2 of it.

3 Q Before that meeting you had read the newspaper
4 article about the indictment, is that correct?

5 A Yes, sir.

6 Q And you understood that the indictment
7 involved --

8 MR. ESBITT: If your Honor please, I object
9 to the witness' understanding of what the indictment was
10 according to some newspaper articles.

11 THE COURT: Perhaps you can reframe the
12 question.

13 MR. FRYMAN: I will.

14 Withdrawn.

15 Q Did the article that you read state that the --

16 MR. ESBITT: I object to what the article
17 stated, your Honor. My objection is to any reference
18 to the article in the newspapers. I think the witness
19 should be restricted to his conversation with my client.

20 THE COURT: Sustained.

21 Q Mr. Chambers, you said in your conversation
22 with Mr. Schwartzbaum that he made a reference to other
23 individuals making payments, is that correct? --

24 A One other individual, \$150.

25 Q And --

Chambers-direct

1zv

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2 A And total payments of \$1,200.

3 Q And did he say who paid those total payments?

4 A No, sir.

5 Q Did you understand --

6 MR. ESBITT: I object to what the witness
7 understood, your Honor.

8 THE COURT: Sustained.

9 Q Did he further identify these individuals
10 in any way?

11 A No, sir.

12 Q If not by name, did he identify the industry
13 they were in?

14 MR. ESBITT: I object to the form of the
15 question.

16 THE COURT: Overruled.

17 A No, sir, he did not.

18 Q Did Mr. Schwartzbaum tell you that --

19 MR. ESBITT: Objection, if your Honor please.
20 I object to that form of a leading question. I have no
21 objection to his asking the witness what Mr. Schwartzbaum
22 said.

23 THE COURT: I will sustain the objection at
24 this time.

25 Q What else do you recall, Mr. Chambers, about

1 lzv

Chambers-direct

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2 that conversation and what Mr. Schwartzbaum said?

3 A Well, with reference to the three amounts that
4 I have already stated and I also asked about his income tax
5 returns, to what year had they been reviewed and approved
6 by the IRS, and he told me to 1971.

7 Q Did he make any -- withdrawn.

8 What specific -- as specifically as you can
9 recall, what did he say with regard to the payments that
10 he made to union officials?

11 MR. ESBITT: I object. The witness has already
12 testified as to the conversation.

13 THE COURT: Overruled.

14 A Well, he said that he couldn't understand the
15 reasoning for the indictment because of the small amounts
16 involved.

17 Q And what else did he say?

18 MR. ESBITT: If anything.

19 A He felt that they were using Mr. Schwartzbaum
20 and the others to get at the larger papers and to the
21 union officials involved.

22 Q And he said the amount that he had paid was
23 \$600?

24 A That's correct, sir.

25 Q Did Mr. Schwartzbaum mention in that conversation

1 lzv

Chambers-direct

2 the matter of immunity?

3 MR. ESBITT: I object to it, counsel, the
4 District Attorney asking the witness about something else
5 that he would like to have the witness testify to --

6 THE COURT: Counsel, he is permitted to lead
7 if the witness cannot otherwise recall the conversation.
8 I will sustain the objection for him to make a further
9 effort to see if the witness can recall the conversation.
10 If he cannot, I will permit the leading:

11 Q Do you recall anything further in that conver-
12 sation?

13 A Yes. He said that two of the larger payers had
14 been granted immunity to testify for the government.

15 MR. FRYMAN: No further questions, your Honor.

16 THE COURT: Cross examine.

17 CROSS EXAMINATION

18 BY MR. ESBITT:

19 Q Mr. Chambers, were you interviewed by Mr. Fryman
20 before you testified today?

21 A Today, no, sir.

22 Q No, before today, were you interviewed by Mr.
23 Fryman?

24 A Yes, sir.

25 Q In preparation for your testimony today?

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Chambers-direct

A No. To recall that memorandum, sir.

Q He showed you the memorandum?

A Yes.

Q And you read the memorandum before you testified today?

A Yes, sir.

Q And that was for the purpose of refreshing your recollection? Is that true?

A Yes, sir.

Q You didn't before reading that memorandum, you didn't recall the details of your conversation back in 1973, did you -- or '70, excuse me.

A Not in that detail.

Q '73. Not in that detail. How many times were you interviewed by Mr. Fryman before you testified today?

A Twice.

Q And when were those interviews?

A One was on March 19th. The other the 27th.

Q That would just be the other day.

A Yes, sir.

Q And those interviews were in Mr. Fryman's office?

A Yes, sir.

1 lzv

Chambers-direct

2 Q And did he take notes -- did he ask you
3 questions?

4 A He gave me a copy of the write up that I had
5 made.

6 Q Yes.

7 A I read it over. He asked me questions about
8 that, sir.

9 Q What questions did he ask you?

10 A Specifically did Mr. Schwartzbaum say that
11 he had paid that money. And the other facts in it.

12 Q Now, you testified that you saw an article
13 in the newspapers about an indictment?

14 A Yes, sir.

15 Q Involving Mr. Schwartzbaum?

16 A Yes, sir.

17 Q You didn't call him up to inquire about that
18 did you?

19 A No, sir.

20 Q He called you?

21 A That's correct.

22 Q And he called you because, as he said to you,
23 he wanted the bank to get all the facts from him directly,
24 isn't that true?

25 A Yes, sir.

Q And when you saw him the next day, that was the day after you saw the article in the newspapers or was it the same day?

A No, it was several days, sir.

Q After you saw the article in the newspapers?

A Yes, sir.

Q But at any rate, the day you saw him was the day of this memorandum that you dictated.

May I have that, please?

A That's correct.

Q And when you saw Mr. Schwartzbaum in his office, was he very much at ease when you saw him?

A Yes, sir.

Q And did he express confidence about the outcome?

A Yes, he did.

Q How long were you in his office?

A Oh, I judge about an hour.

Q And I think you said you took notes about figures?

A That's correct.

Q Is that right?

A That's correct.

Q Do you have those notes?

1
2 A No, sir.

3 Q And what figures did you take down?

4 A The amounts that were mentioned in there, \$1,200,
5 \$600, \$150. The income tax and there was some other figures
6 relative to potential sales that he had orders for.

7 Q And you took those figures down?

8 A Yes, sir.

9 Q What time -- this meeting, you said, was how
10 long?

11 A Approximately an hour.

12 Q One hour?

13 A Yes, sir.

14 Q What time of the day was it?

15 A Oh, about ten o'clock in the morning I think
16 it was set down for.

17 Q And you finished with him, concluded then
18 about eleven o'clock?

19 A Yes, sir.

20 QD Did you come back to your office on 41st
21 Street and Broadway or did you stop off at some
22 other account?

23 A No, I went right back, sir.

24 Q Came right back?

25 A Yes, sir.

1
2 Q Did you write out a memorandum for your
3 secretary to type up or did you dictate it to her?

4 A I dictated it.

5 Q When?

6 A As soon as I got back to the office.

7 Q At the same time or later in the afternoon?

8 A As soon as I got back to the office.

9 Q Who was your secretary, Robin Griffin?

10 A That was the one, yes.

11 Q That's the one you dictated this memorandum
12 to?

13 A Yes.

14 Q And now, aside from the figures that you put
15 down, everything else in this memorandum of yours is based
16 upon your recollection of your conversation, one hour con-
17 versation with Mr. Schwartzbaum, is that true?

18 A Yes, sir.

19 Q Now, when did Robin Griffin, your secretary,
20 type up the first draft? Did it get to you that day or the
21 next day?

22 A That afternoon, sir.

23 Q And you revised it?

24 A Yes, sir.

25 Q What corrections did you make?

1 lzv

Chambers-direct

2 A Gramatically, primarily.

3 Q Any corrections of substance?

4 A No, sir.

5 Q And then you corrected the grammar and then
6 she retyped it?

7 A That's correct.

8 Q And that was the next day or the same day or
9 don't you recall?

10 A The next day.

11 Q And, of course, you read it over before you
12 initialed it?

13 A Yes, sir.

14 Q When you read it over and initialed it in
15 this form that Mr. Fryman has shown to you, you believed
16 it to be a correct version of what actually your conversa-
17 tion with Mr. Schwartzbaum was?

18 A Yes, sir.

19 Q Was it possible you could have been mistaken?

20 A No, sir.

21 Q You don't think so?

22 A No.

23 Q Now, in this memorandum you have apparently
24 dictated and your secretary has typed in, and I quote,
25 "Schwartzbaum testified before the grand jury on Monday,

2 April 2nd, and along with three other defendants was released
3 on his own recognizance pending the trial."

4 Do you remember that?

5 A Yes, sir.

6 Q Is it your testimony today that Mr. Schwartz-
7 baum said that to you that morning on April 3rd?

8 A No. The word grand jury is not correct. I'm
9 not legally trained, sir.

10 Q Let's first get to the facts.

11 A Yes, sir.

12 Q When you say it is not correct, do you mean
13 Miss Robin Griffin made a mistake when she typed it?

14 A No, sir.

15 Q You made the mistake?

16 A Correct.

17 Q So this memorandum which you dictated was not
18 factually correct, was it?

19 A With that exception is was, sir.

20 Q I'll get to the other exceptions in a moment,
21 but at least with respect to this first item, you found
22 out that that was not correct. And who told you that was
23 not correct, Mr. Fryman?

24 A Probably. Yes, he did.

25 Q Mr. Chambers --

2 A All right. Granted, he did.

3 Q Please, I don't want an all right answer.

4 I want the truth and I don't want you to testify to
5 satisfy me. You must testify to satisfy the Court and you
6 must testify truthfully, do you understand?

7 A Of course.

8 Q Please, I am not asking you to give an answer
9 "all right". Forgive me, I am not tending to be critical
10 and it is not my function to do that. What I really would
11 like to know, is it not a fact that you had dictated it in
12 this form to Miss Griffin, your secretary?

13 A Correct.

14 Q And you said the statements which I have just
15 read to you?

16 A Yes.

17 Q And now today you will testify under oath that
18 now your recollection is that you did not hear that from Mr.
19 Schwartzbaum and you had made a mistake when you thought you
20 had heard it from him and so dictated it to the secretary,
21 is that not true?

22 A Yes, sir.

23 Q My next question which had just preceded this,
24 I ask you now when did you find out for the first time that
25 you had made a mistake when you dictated this one sentence

2 to your secretary?

3 A When I talked to Mr. Fryman, when he first
4 called me.

5 Q And that was on the 19th?

6 A Yes, sir.

7 Q Sir?

8 A The 19th.

9 Q And he let you read this memorandum?

10 A Yes, sir.

11 Q And then he said to you, you must have been
12 mistaken because we know that Mr. Schwartzbaum did not
13 testify before a grand jury or did not testify at any time
14 before a grand jury, didn't he tell you that?

15 MR. FRYMAN: Objection, your Honor.

16 THE COURT: Excuse me. I don't want to limit
17 the cross examination in any fashion. It is already past
18 4:30. I have two other cases that are apparently ready.
19 The jury has been told that we will break at 4:30 so we
20 will end at this point for the day.

21 We will resume tomorrow morning at 10:00 a.m.,
22 ten o'clock. Please be punctual in appearing tomorrow at
23 ten o'clock. Please do not form or express an opinion about
24 the case. Keep an open mind until you have heard all the
25 evidence. We will see you in the morning, Mr. Witness. Thank
you. Step down.

(Adjourned to 4/3/74 at 10:00 a.m.)

WITNESS INDEX

<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Pedirect</u>	<u>Recross</u>
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8	255	299
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UNITED STATES OF AMERICA

326

v.

73 Cr. 616

KARL "JACK" SCHWARTZBAUM

April 3, 1974
10:00 a.m.

- - -

(In open court - jury not present.)

THE COURT: Is there any request before we
proceed?

(No response.)

THE COURT: We will resume with Mr. Chambers
on the stand.

(Jury present.)

A L B E R T C H A M B E R S, having been
previously duly sworn, resumed the stand and
testified further as follows:

THE COURT: Mr. Chambers, you are still under
oath. Mr. Fryman, have you completed your examination of
the witness?

MR. FRYMAN: I completed direct examination.
I believe Mr. Esbitt is on cross.

THE COURT: Mr. Esbitt, you were on cross?

MR. ESBITT: I was on cross yesterday.

CROSS EXAMINATION CONTINUED

BY MR. ESBITT:

Q Just to bring us up to date, Mr. Chambers, you

testified on direct examination under questioning by Mr. Fryman yesterday that you saw an article in the newspapers indicating there had been an indictment against a number of people, including Mr. Schwartzbaum?

A Correct.

Q And you had not called Mr. Schwartzbaum but Mr. Schwartzbaum had called you?

A Correct.

Q And asked you to come up to see him?

A Correct.

Q And you did?

A Correct.

Q At that meeting he was very much at ease, was he not?

A Correct.

Q He indicated complete confidence, did he not?

A Correct.

MR. FRYMAN: I object to that question, your Honor.

THE COURT: Sustained.

Q Then he gave you some information to reassure the bank because he had a substantial bank loan with your Chase Bank, isn't that right?

A Correct.

2 Q I believe your recollection was that you took
3 some notes, is that right?

4 A Correct.

5 Q But just notes of figures, not of what he told
6 you?

7 A Correct.

8 Q Other than figures, correct?

9 A That's right.

10 Q Then, if I recall your testimony after your
11 45-minute or hour meeting with him, y ou went back to your
12 office at the Chase Bank at 41st Street and Times Square
13 and dictated a memorandum of your conversation with Mr.
14 Schwartzbaum, your secretary at that time was Robin Griffin,
15 is that correct?

16 A Correct.

17 Q Then she typed up a draft which you received,
18 read over, corrected and I think you just found some
19 grammatical errors, is that right?

20 A That was the point of it. Grammatical and
21 content.

22 Q And context?

23 A Content.

24 Q What errors in content did you find in the
25 first draft?

1 A None relative to the figures. Merely wording
2
3 of the memorandum, sir.

4 Q What wording did you find incorrect in the
5 content of that first draft?

6 A I could only recall that it was probably
7 changing sentences around, sir. That's all.

8 Q No error of content but an error in, what,
9 draftsmanship?

10 A That's right, sir.

11 Q So that when you received that first memorandum
12 and looked it over, in your opinion at that time it was
13 substantially correct and a correct memorandum of your
14 meeting with Mr. Schwartzbaum?

15 A Yes.

16 Q At that time?

17 A At that time.

18 Q You thought it was correct. Now, we have
19 discovered in cross examination that it was not correct,
20 isn't that true?

21 A Yes.

22 Q Well, Mr. Chambers, you have some hesitancy.
23 Is it true, was it incorrect? You discovered that, did you
24 not, that your recollection was incorrect?

25 MR. FRYMAN: I object to the form of the

question, your Honor.

THE COURT: I will allow it.

A Yes.

Q It was incorrect, true?

A Yes, sir.

Q And the first time that you found out that it was incorrect was when you were interviewed by Mr. Fryman in preparation for this trial, and he showed you that memorandum, Government's Exhibit 4 for identification, and asked you to read it, did he not?

A Yes, sir.

Q Did he ask you whether it was correct?

A He did.

Q What did you tell him?

A It was correct.

Q And then he told you that it couldn't be correct because in that memorandum you said that Mr. Schwartzbaum told you that on April 2nd he had testified before a grand jury, isn't that what he told you?

A Correct.

Q And that Mr. Schwartzbaum couldn't have told you that because he had not testified before the grand jury, true?

A True.

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2 Q And so you realized at that time after being
3 advised of this information that your recollection of your
4 conversation with Mr. Schwartzbaum on the third of April
5 was incorrect in that respect?

6 A That's correct.

7 Q I think yesterday I asked you whether or not
8 Mr. Fryman had brought to your attention anything else in
9 the memorandum which was incorrect?

10 A No, sir.

11 Q Nothing at all, sir?

12 A No, sir.

13 Q You testified that in your conversation with
14 Mr. Schwartzbaum he had told you that the payment he made
15 totaled \$600 during 1969, the year in question, right?

16 A Yes, sir.

17 Q That's your recollection?

18 A Yes, sir.

19 Q It still is your recollection?

20 A Yes, sir.

21 Q You also testified that Mr. Schwartzbaum said
22 to you the aggregate total payments by the defendant would
23 be about \$1,200, right?

24 A That's correct.

25 Q And you wrote down the figures \$1,200?

1 A Yes, sir.

2
3 MR. ESBITT: Mark this for identification,
4 please.

5 (Defendant's Exhibit K, was marked for
6 identification.)

7 Q Mr. Chambers, I show you Exhibit K for iden-
8 tification which is a copy --

9 MR. FRYMAN: Objection to the counsel identi-
10 fying this document before it is --

11 MR. ESBITT: It is a court record, your
12 Honor.

13 THE COURT: May I see it?

14 MR. ESBITT: It is the indictment on which
15 this trial is based, and I think counsel has conceded that
16 it is an accurate copy.

17 THE COURT: I will sustain the objection to any
18 identification of K, but --

19 MR. ESBITT: Your Honor, the reason I used
20 this rather than the official court record is because there
21 are notations on that.

22 THE COURT: That is certainly correct. Do you
23 have a clean copy?

24 MR. ESBITT: This is a clean copy.

25 MR. FRYMAN: We do not, your Honor, not with us.

THE COURT: Have you a copy of this one?

MR. FRYMAN: Yes, your Honor.

THE COURT: Can you make it available to counsel?

MR. FRYMAN: Yes. I also find we have a clean copy of the superseding indictment.

THE COURT: Use this one. Check that, Mr. Esbitt.

MR. ESBITT: No, sir.

THE COURT: It will not suffice?

MR. ESBITT: No, sir. The exhibit I showed -- I can't describe it because the witness is on the witness stand. The one you showed me, your Honor, is different than the one I showed --

THE COURT: Don't bother, Mr. Fryman. The ruling is that counsel may not characterize it but you may proceed. You show him a paper.

Q Mr. Chambers, I show you Defendant's Exhibit K for identification and ask you to read it and add up the amounts that appear in this paper.

A On the first sheet, sir?

Q All the way through, please add up the amounts.

THE COURT: Just so I understand, your question of the witness is directed to him in relation to the

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memorandum which he had identified as being his, is that correct?

MR. ESBITT: Oh, yes, sir.

THE COURT: And the conversation which he says he had with the defendant which he says led to the preparation by him of the memorandum. Is that so?

MR. ESBITT: No, sir, that is not what I am asking him.

THE COURT: I will take the question in the robing room.

(In the robing room.)

MR. ESBITT: Your HOnor, may I explain what I am trying to do?

THE COURT: Yes.

MR. ESBITT: This witness has testified on direct examination, as we all know. On cross examination I am trying to refresh his recollection as to perhaps the inaccuray of his recollection and now the first step has been established. He was wrong when he said so and so.

Now I am seeking to establish something else. He has testified that Schwartzbaum said to him "The aggregate total payments by the defendant would be about \$1,200." He so testified and that's his memorandum. I want to show that he is inaccurate with respect to that.

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THE COURT: How so?

MR. ESBITT: Because here is the indictment and I want to go back, your Honor refused to permit me to read it to him to tell him what it is --

THE COURT: So far.

MR. ESBITT: I can offer it in evidence. It is the indictment and it is the basis on which this trial is based. This is the indictment, not the curtailed version.

THE COURT: Since you brought it up, the curtailed version represents a meticulous effort by the Court and the government to avoid prejudicing your client in any fashion with respect to these other aspects of this longer uncleaned up indictment.

MR. ESBITT: I agree completely. But if I am willing to take the risk --

THE COURT: That's another matter.

MR. ESBITT: I want him to know this is the full indictment.

THE COURT: What do you want to do with that, sir?

MR. ESBITT: I want him to read it and add it up. When he adds it up, he won't come to a figure of \$1,200. He will come to a figure of \$3,750.

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2 THE COURT: What's the relevance?

3 MR. ESBITT: I'm trying to establish by showing
4 him that these are the actual facts, just as he did when he
5 spoke to this witness in his room, and that refreshed his
6 recollection, and so he said he made a mistake. So when I
7 show him the actual indictment and the actual facts, I can
8 then ask him, "Now, having read this and having totaled it
9 up to \$3,750, does it cause you to think back and perhaps
10 you were in error when he said \$1,200?"

11 MR. FRYMAN: The error, your Honor, in that
12 analysis is that Mr. Esbitt has not established that Mr.
13 Schwartzbaum showed him the indictment --

14 MR. ESBITT: Of course not.

15 MR. FRYMAN: -- that they went over the
16 indictment, they added up the figures. The memorandum
17 refers to statements that Mr. Schwartzbaum made at that
18 meeting about the other payments. The witness has never
19 seen this document before.

20 MR. ESBITT: Of course he didn't. I showed it
21 to him for the first time. He had never known until he got
22 to your office that Mr. Schwartzbaum had not appeared before
23 a grand jury.

24 THE COURT: Mr. Esbitt, let me make my ruling.
25 The ruling is that you may show that to the witness and ask

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him if he has ever seen it before. You may undertake to

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show -- if he says yes, you may ask him whether he saw it

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when he met with the government attorneys. If he says he

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has seen it before, you may ask him to total the amounts.

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I don't want you to ask him what the amount totals. I don't

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want that \$3,000 figure to come out.

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MR. ESBITT: Your Honor, that is important to

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me, Judge.

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THE COURT: You may ask him, then, having totaled

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the figure, without stating it, whether or not it refreshes

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his recollection or changes his view in any way with

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respect to the \$1,200 amount. Before you can do any of

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that, you first have to show that he has seen that document

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and that he saw it before he drafted this document which

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he claims --

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MR. ESBITT: I'm sure he didn't Judge.

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THE COURT: Then if Mr. Fryman objects to

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any further proceedings with reference to K for identifi-

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cation, I will sustain the objection. I wanted to hear

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you out first.

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MR. ESBITT: But, Judge, I don't want to belabor

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this thing, really, but Mr. Fryman has refreshed his recol-

24

lection by telling him something.

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MR. SABETTA: Not about this, Mr. Esbitt.

2 THE COURT: Counselor, I think we will just
3 consider that the ruling because I do not agree with your
4 construct and I will sustain an objection if one is made.

5 MR. ESBITT: If I decide I want to offer this
6 in evidence, will your Honor object to that?

7 MR. SABETTA: May I say, your Honor, that in this
8 respect Mr. Esbitt can put in this document on his own
9 case, assuming it is authentic, and everything.

10 If this witness can't identify the document,
11 you can't offer documents in evidence on our case when --

12 MR. ESBITT: This is the court record of this
13 trial. This is the indictment.

14 MR. SABETTA: You may put it in on your
15 direct.

16 THE COURT: Mr. Reporter, step outside, please.
17 I will accept it as part of the defendant's case if you
18 wish to offer the indictment, not at this time.

19 (In open court.)

20 THE COURT: Proceed, please.

21 BY MR. ESBITT:

22 Q Mr. Chambers, you have previously testified
23 that Mr. Schwartzbaum told you that the aggregate total
24 payments by the four defendants would be \$1,200. Right?

25 A Correct.

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Q That's your recollection before when you dictated the memorandum and it is your recollection today?

A Yes, sir.

Q I show you Defendant's Exhibit K for identification and ask you to look at it and tell us whether you have ever seen it before.

A No, sir, I have not.

Q Please look it over, add up the amounts, do not tell us the total, and then I will ask you the next question.

A May I take a paper and add them up?

MR. FRYMAN: I object to this calculation that counsel is asking the witness to make, your Honor.

THE COURT: You say you have never seen that before?

THE WITNESS: No, sir.

THE COURT: Objection sustained.

MR. ESBITT: Then I misunderstood our conference, your Honor.

THE COURT: Perhaps you did, but he says he has never seen it before. The objection is sustained.

Q I show you this document again and ask you to look it over from beginning to end and then I will ask you question.

2 THE COURT: I will deem that to be not
3 relevant at this time.

4 MR. ESBITT: If your Honor please, I will have
5 to go to the side bar.

6 THE COURT: You may take it from him and proceed
7 to the next line of questioning.

8 Hand it back to counsel, please.

9 MR. ESBITT: I want to use it to refresh his
10 recollection.

11 THE COURT: He says he never has seen it before

12 MR. ESBITT: Mr. Glasser has testified the same
13 way.

14 THE COURT: Counsel, don't argue, please.

15 MR. ESBITT: I apologize to the Court.

16 THE COURT: You may use it and ask him if it
17 somehow refreshes his recollection, yes.

18 Q Please read it from the beginning to end and
19 then I will ask you the question. I call your attention in
20 reading through it to the amounts involved. But don't tell
21 us the total amount.

22 MR. FRYMAN: I don't believe there has been any
23 question put to the witness, your Honor, that indicates a
24 failure of recollection. It seems to me this is improper
25 procedure until Mr. Esbitt establishes a failure of

recollection.

MR. ESBITT: Your Honor, I just make the observation about the testimony of yesterday, your Honor, with respect to the government's witness.

THE COURT: I will allow a general inquiry, but, remember, there has been no basis yet showing that he doesn't recall. You may proceed carefully.

(Pause.)

Q Have you read it over?

A Yes, sir.

Q Don't tell us the amounts. But, having read it over, does it cause you now to think back on what you heard from Mr. Schwartzbaum and what you dictated and whether or not what you dictated and what you have testified to, for example, or, specifically, that the aggregate total payments by the four defendants would be about \$1,200 -- having read that and thinking back upon your meeting with him and your dictation and now appearing on the witness stand, does reading that cause you to reconsider and think that perhaps you may have been in error with respect to that as you were in error with respect to your memorandum that he appeared before the grand jury?

A No, sir.

Q It doesn't?

2 A No, sir.

3 Q It was your testimony, I believe, that Mr.
4 Schwartzbaum told you in that meeting, and it appears in
5 this memorandum, "According to Schwartzbaum the payment
6 he made totaled \$600." Do you remember that?

7 A Yes, sir.

8 Q Mr. Schwartzbaum at that meeting was very much
9 at ease, was he not?

10 A Correct.

11 MR. FRYMAN: Objection. That's asked and
12 answered.

13 THE COURT: It was asked but not answered.
14 You may answer it. What was the answer?

15 THE WITNESS: Yes, sir.

16 Q And expressed confidence about the outcome?

17 MR. FRYMAN: Objection.

18 THE COURT: Objection sustained.

19 MR. ESBITT: Your Honor, he has already
20 testified --

21 THE COURT: Objection sustained, counselor.

22 Q And you know, do you not, that on the day before
23 you had the meeting with him he had pleaded not guilty to
24 these very charges before Judge Pierce, did you know that?

25 A I didn't know that until the morning I sat down

with him, sir.

Q The morning you sat down, that was the third of April, correct?

A Right.

Q And he told you, did he, that the day before he had pleaded not guilty?

A He said there had been an arraignment and he had been released on his own recognizance.

Q Did he say that he pleaded not guilty?

A No, sir. If he did, I would have said it there.

Q Sir?

A If he had, I would have indicated it in my memorandum.

Q I tell you now that a year ago to this very day before Judge Pierce Mr. Schwartzbaum pleaded not guilty to these charges. Keep in mind on April 2nd, a day before you saw him, he had pleaded not guilty before Judge Pierce.

Now the next day he came to you and said that he made payments totaling \$600, right?

A Correct.

Q I show you a copy of the indictment against Mr. Schwartzbaum and ask you examine it.

(PAUSE.)

Q I want you to think back very carefully, Mr.

Chambers. Mr. Schwartzbaum had appeared in this court on the 2nd of April of 1973 and pleaded not guilty. The next day he called you in and wanted to assure the bank that they had nothing to be concerned with. Right? Isn't that what he said in substance?

A That's not what he said.

Q He never said so, but wasn't that the purpose of the meeting?

MR. FRYMAN: Objection.

THE COURT: Objection sustained.

Q Well, he said that you were entitled to all the facts affecting him as a result of the recent newspaper articles, is that what he said?

A Correct.

Q And you got the impression, did you not, that he wanted to assure the bank, since he had substantial bank loans, that there was nothing for the bank to be concerned about, isn't that right?

A Well, I say yes or not. That isn't true, sir.

Q Don't testify to anything that isn't true. What did you think he was -- he called you in to see you about?

MR. FRYMAN: Objection.

THE COURT: Objection sustained.

Q Now, Mr. Chambers, considering the fact that he

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pleaded not guilty the day before, don't you think that what Mr. Schwartzbaum told you on the morning of the 3rd was not that he paid this money of \$600 which appears in the indictment, but that he had been charged with that crime?

A No, sir. He said he paid it.

Q He paid it?

A Yes.

Q That's your recollection?

A Yes, sir.

Q And that recollection is as sure as your recollection about his telling you that he appeared before the grand jury?

A Yes, sir.

Q Just as sure as that?

A Yes.

Q In that recollection you know you were in error?

A Of course.

Q Did he also discuss confirmed orders with you?

A Yes, sir, he did.

Q Do you remember today what he told you about confirmed orders?

A There was about \$300,000 worth he had there, sir.

Q Did he tell you anything about August orders?

A He mentioned he had two additional orders --

Q Two what?

A Two additional orders, about \$40,000 each, and then there were additional small amounts totaling that \$300,00

Q He said two additional orders. Did he tell you what his August orders were, if you recall?

A No. They would have to be 39 or 40 thousand, sir, because of his shipment date at that time.

Q It would have to be either 39 or 40 for what the orders were in August?

A I can't recall the exact month, sir.

Q But you looked at your memorandum -- when, last week?

A Yes.

Q When you read that you had the facts in your mind in your memorandum?

A The amounts, yes, sir.

Q From last week to today it is your recollection that the August figure was 39 or 40 thousand, that is your best recollection today?

A Yes.

Q I will show you Government's Exhibit 4 for identification which is your memorandum in the files of the Chase

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Bank and ask you to read it over and see whether or not
that refreshes your recollection and perhaps your desire
to change your testimony.

A No, sir. The facts and figures are correct.

Q He talked to you about orders of \$131,000, did
he not?

A That's right.

Q You didn't testify to that just now, did
you?

A I said \$131,000 was one order and there were
two of about 39 or 40 thousand.

Q I thought your testimony was 39 or 40.

A I also said there was one for 131, sir.

Q You considered Mr. Schwartzbaum to be a good
and valuable account for the bank, did you not?

A Yes, sir.

Q The original line of credit was how much?

A I don't know. I didn't originate the loan,
sir.

Q But when the account was assigned to you, didn't
you go through the files to refresh your memory as to the
status of the account?

A No, sir, because the officer that started it
was at the branch at that time, and I just took it along

from his figures.

Q It was \$175,000, was it not?

A It was 175 originally or 140 when I took it over, sir.

Q I think you testified yesterday that you increased the line of credit?

A That's correct, sir.

Q Byan additional \$260,000?

A That's about right. It came out to about \$400,000 total at that time.

Q When did you increase the loan to \$400,000?

A That was in January of 1973.

Q And it was you that granted the additional loan?

A I had to have approval. I didn't have that much authority, sir.

Q Of course. But you recommended it?

A Yes.

Q After getting approval you granted the additional loan?

A Yes, sir.

Q You say that Mr. Schwartzbaum told you on the morning of April 3, 1973 that he had paid these monies to the union officials, is that what he told you?

2 A That's correct, sir.

3 Q Did you think that he was telling you that he
4 had committed a crime?

5 MR. FRYMAN: Objection.

6 THE COURT: Sustained.

7 Q How did you react to that statement that he
8 made to you?

9 MR. FRYMAN: Objection.

10 THE COURT: I will allow it. Go ahead.

11 A I wasn't pleased of the fact but I was not
12 concerned because of the dollars involved.

13 Q The dollars involved? This loan you had just
14 increased recently to almost \$400,000.

15 A Right.

16 Q Here is a man who is indicted the day before,
17 you come to his office and he tells you that he paid
18 \$600,000 in connection with a criminal charge --

19 A \$600.

20 Q -- and you weren't concerned about it because
21 the amount was not large enough?

22 A \$600,000?

23 Q \$600, I'm sorry. The loan was \$400,000?

24 A That's correct.

25 Q That's a substantial loan, is it not?

2 A Yes.

3 Q And now Mr. Schwartzbaum, you say, came in and
4 said he paid the \$600 that was referred to in the criminal
5 charges, right?

6 A Right.

7 Q I asked you whether you were concerned about
8 your loan. You said you were not concerned because of the
9 amount.

10 A That's correct.

11 Q Which amount were you referring to, the amount of
12 \$600 or the amount of the \$400,000?

13 A \$600.

14 Q You were not concerned about your \$400,000
15 loan because of the amount of \$600 was so small that that
16 didn't seem to bother you or the bank, is that what you
17 say?

18 A It had no serious impact on the financial stan-
19 ding of the company, sir.

20 Q The \$600 had no serious impact on the standing
21 of the company, but did the criminal charge have an impact
22 upon the Chase Bank?

23 A It had -- we were displeased with it but we
24 couldn't do anything about the loan.

25 Q Couldn't you call the loan?

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A No. The man had work in the process. We had to let that be completed and shipped, sir.

Q Was this an open loan?

A It is an unsecured loan.

Q And was it an open loan?

A I don't know what you mean by open loan.

Q Could you call the loan in or the bank call the loan in anytime they wanted to?

A No, sir.

It was time notes. We had to wait until maturity.

Q What was the time note on these loans?

A It would be April, sometime in April, the earliest.

Q This is April, we are talking about?

A Subsequent to that date. I would say the latter part of the month. 90 days from the date we granted the loan, sir.

Q When was the loan?

A I don't know the exact date in January, sir.

Q In January? So that you could have called this loan at the end of April, 1973?

A Yes, sir.

Q And you didn't call it?

1 A That's right.

2 Q Isn't that true?

3 A Yes.

4 Q And the reason that you didn't call it is that
5 you were not the least -- you nor the bank were not the
6 least bit concerned about this criminal charge?

7 A We were concerned, sir, but in view of the
8 amount, we felt we could go along, the normal turn of
9 events, that loan would have been paid by the end of the
10 year, according to our agreement.

11 Q Did you have bank lawyers investigate these
12 criminal charges against the defendant?

13 A No, sir.

14 Q You did not?

15 A We just reported it.

16 Q And the report that you made was simply this
17 comment?

18 A That's right.

19 Q In your memorandum?

20 A Correct.

21 Q Nothing else?

22 A Nothing else.

23 Q Is it not true that you treated this loan as
24 though he had never told you anything about making any
25

2 payment of \$600?

3 MR. FRYMAN: Objection.

4 THE COURT: Overruled.

5 A No. We were concerned. We followed it
6 carefully to assure payments coming in, sir.

7 Q That you would do in the normal course of
8 events anyway, wouldn't you?

9 A Well, we also asked for the current financial
10 statements of the company.

11 Q And you would have done that anyway because
12 of the size of the loan, \$400,000?

13 A Right.

14 Q Isn't that true?

15 A Yes, sir.

16 Q Did you speak to any of your superiors about
17 this matter of the criminal charges against Mr. Schwartz-
18 baum?

19 A A copy of that memorandum was sent. I just
20 sent it up to them, sir.

21 Q Sir?

22 A I sent that copy of the memorandum to my
23 superiors.

24 Q I understand. I ask you whether or not you spoke
25 to them besides sending the memorandum.

1 A Not that I recall, sir.

2 Q When did you leave the bank?

3 A September 28, 1973.

4 (Defendant's Exhibit L, was marked for
5 identification.)_

6 Q Besides this memorandum of yours of April 3,
7 1973, did you have any more memorandums of yours in the
8 file?

9 A I don't recall, sir.

10 Q I will show you Defendant's Exhibit L for
11 identification and ask you if that refreshes your recollec-
12 tion?

13 A Yes, sir. That's my memorandum.

14 Q What is the date of it.

15 A April 26, 1973.

16 Q It was dictated by you?

17 A Yes, sir.

18 Q And signed by you?

19 A Yes., sir.

20 Q Is it your recollection that you dictated
21 that to your secretary?

22 A Yes, sir.

23 Q Is that the same Robin Griffin?

24 A that's correct, sir.
25

1 Q It is your practice to dictate memorandums
2
3 for the file?

4 A Yes, sir.

5 Q And it is the normal practice of the bank to
6 have such memorandums and put them in the file?

7 A Yes, sir.

8 MR. ESBITT: I will offer it in evidence.

9 MR. FRYMAN: No objection, your Honor.

10 THE COURT: Received.

11 (Defendant's Exhibit L was received in
12 evidence.)

13 MR. ESBITT: This is Exhibit L, ladies and
14 gentlemen of the jury. It says "K.J. Schwartzbaum, Inc.,
15 Number 32 Times Square."

16 Q Mr. Chambers, this number 32 Times Square
17 isn't that the branch number of the Chase Manhattan Bank?

18 A A That's correct.

19 MR. ESBITT: 4/26/73: "We have received
20 physical financial information on the subject prepared
21 as usual on the company's letterhead without the CPA's
22 name but indicated this is an unaudited statement. On
23 net sales of \$1,125,000, a net profit of \$15,000 is shown
24 after officer's salaries of \$31,000, increasing net
25 worth to \$208,000. A heavy portion is reflected in the

balance sheet with debt at \$612,000 which included \$140,000 due us, \$630,000 notes payable trade and \$327,000 accounts payable. Current assets of \$739,000 consisted primarily of inventory, \$403,000 receivables, net, \$291,000 and cash of \$45,000.

"An inventory breakdown is not furnished. However, the company would be buying furs for the coming year production. Probably a more realistic picture would be reflected in a September 30th Friday financial statement as they would have sold the bulk of the inventory and should reflect a higher amount in receivables.

"We will contact the company and request quarterly statements in order to be in a better position to follow the company's financial standing."

Q Nothing in here, Mr. Chambers, about this indictment?

A No, sir.

Q Or the concern of your bank about the criminal charges?

A No, sir.

Q You left, you say, in September?

A Yes, sir.

Q Was this a good account with the Chase Bank at the time you left?

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A To the best of my recollection, sir.

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Q It was? To the best of your recollection this

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Schwartzbaum account was a still good account with the bank?

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A Yes.

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Q During the time that you took over this account,

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the Schwartzbaum account, and up until the time of your

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leaving, during that period of time did you have occasion

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to check the Schwartzbaum firm and Mr. Schwartzbaum with

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other bankers, financial agencies and people in the indus-

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try such as associations?

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A Not that I recall.

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Q You did not?

14

A No, sir.

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Q Did you make any check with respect to other

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officials of your bank with respect to Mr. Schwartzbaum

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and this account?

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A Only one branch would be checked. That was

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the Pennsylvania branch where there was a small secured

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loan out to Mr. Schwartzbaum.

21

Q In the course of this period of time that you

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handled this account and Mr. Schwartzbaum, did you have

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occasion to learn the reputation of Mr. Schwartzbaum in

24

the community for honesty, integrity, and so on?--

25

A From what we found out, yes, sir.

2 Q And what was his reputation for honesty,
3 integrity?

4 A It was good.

5 MR. FRYMAN: Objection. Mr. Esbitt hasn't
6 specified the nature of the community he is talking about.

7 THE COURT: Sustained.

8 Q In the financial community and in the fur
9 industry. You had occasion to determine what his reputation
10 was, did you not?

11 A Yes, sir.

12 Q And his reputation was what?

13 A It was good.

14 MR. ESBITT: No further questions.

15 REDIRECT EXAMINATION

16 BY MR. FRYMAN:

17 Q You said in evaluating the impact of Mr.
18 Schwartzbaum's statements to you about the payments, you
19 took into consideration the amount of the payments in
20 evaluating the impact on the outstanding bank loan.

21 What was the analysis that you made that
22 made the amount, the \$600 amount of the payments, signifi-
23 cant?

24 A \$600, we looked at it from the end of what
25 additional taxes he might have to pay if that were

disallowed, and this is a minimal effect on the financial standing of the company.

Q So you considered it from the point of view of the additional tax liability?

A That is correct.

Q And that impact on the outstanding loan?

A Right.

Q You said you had been with the Chase Bank 43 years?

A Yes, sir.

Q You have had loans outstanding with many firms over those 43 years?

A Yes, sir.

Q On how many occasions had a firm called you or an official of a firm called you and said that he had been indicted?

MR. ESBITT: I object, if your Honor please .

THE COURT: Sustained.

Q Was this call that you received from Mr. Schwartzbaum concerning his indictment an unusual occurrence as a bank officer?

MR. ESBITT: I object, if your Honor please.

THE COURT: Overruled.

A Would you repeat that, sir?

2 (Whereupon, the pending question was read
3 back by the reporter.)

4 A Yes, it was.

5 Q And when you went and met with him, did you
6 pay particular attention to what he told you about the indict-
7 ment and the charges and his conduct?

8 MR. ESBITT: I object, if your Honor please.
9 The witness has testified on direct examination to the con-
10 versation, the circumstances of it, and on cross examina-
11 tion.

12 THE COURT: I will allow it. Go ahead.

13 A Again I missed the question.

14 (Whereupon, the pending question was read
15 back by the reporter.)

16 A Yes, sir.

17 MR. FRYMAN: No further questions, your Honor.

18 THE COURT: Any recross, Mr. Esbitt?

19 MR. ESBITT: Yes.

20 RE CROSS EXAMINATION

21 BY MR. ESBITT:

22 Q Did you pay more attention than that to anything
23 else in your memorandum?

24 A It was all part of the same discussion, sir.

25 Q It was all part of the same session? You didn't

2 pay any special attention to his discussion about the charges
3 against him, did you?

4 A On the amounts set down there.

5 Q But you set down amounts with respect to
6 purchases?

7 A Yes.

8 Q And you set down amounts with respect to
9 orders?

10 A Yes, sir.

11 Q So you didn't pay any special attention to
12 this fact, did you, this fact about the charges against
13 him?

14 A Other than I was concerned about it and wanted
15 to find out amounts, if possible. That's all.

16 Q And he told you everything that you wanted
17 to know?

18 A That's right, sir.

19 MR. ESBITT: That's all.

20 MR. FRYMAN: No redirect, your Honor.

21 THE COURT: Step down, sir.

22 (Witness excused.)

23 MR. FRYMAN: Your Honor, this completes the
24 government's case.

25 THE COURT: Yesterday I told you, ladies and

gentlemen, that certain evidence was being received subject to connection. I instruct you now that I have found this evidence connected and thus it may be considered by you, along with all other evidence in the case.

However, you must keep in mind that this ruling does not in anyway represent a finding by the Court as to what the facts are in this case. That determination must be made by you, the jury. I have simply ruled that the evidence in question may be considered by you when you perform your function of deciding what the facts in the case are.

Would you step out for just a few moments? I have to take up a few matters with counsel. Please don't talk about the case yet among yourselves.

(Jury not present.)

THE COURT: The government has rested.

MR. ESBITT: I have a motion, your Honor.

THE COURT: I will hear you now on the Rule 29 motion.

MR. ESBITT: If your HONor please, I move to-- for judgment of acquittal and for a dismissal of the indictment at the conclusion of the government's case on the ground that the government has failed to prove by credible evidence any likelihood of the guilt of this defendant.

1 I recognize the fact, your Honor, that
2 normally in circumstances similar to this or in some
3 circumstances it becomes a question for the jury as to
4 whether or not they believe a witness. But the record
5 here is so replete with the fact that this witness -- and
6 I remind your Honor that there is only one witness for
7 the government on the charges in this indictment, only
8 one -- and the charge we are referring to, of course, is
9 the payments to defendant Hoff.

10 Not one other witness called by the government
11 can confirm that. Oh, it is true, they brought in Mr.
12 Jaffee, and it is true they had him testify to what
13 appeared to be another crime, and reference is made in
14 this latest request to charge, but that's not any proof
15 of what happened in this case and that is no proof of
16 the charges in this indictment, and the charges are
17 very simple, that Mr. Schwartzbaum made -- you know, I
18 would like to interrupt. May I, for just a minute? I
19 have another motion and I would like to direct myself
20 to it first.

21 I move to dismiss the 4th count of the
22 indictment. There is no proof of this 4th alleged crime.

23 MR. FRYMAN: Your Honor, the government con-
24 sents to a motion to dismiss the 4th count relating to
25

2 the payment in 1970.

3 THE COURT: That motion is granted.

4 MR. ESBITT: Now, if I may go back, and I
5 apologize for interrupting, I was telling your Honor that
6 there is no proof in this case of the facts charged in this
7 indictment by any witness except Glasser. Mr. Bittman
8 didn't testify to it. On the contrary, he was asked by
9 the government -- and here is a witness who was the general
10 manager, the vice president, in charge of everything, was
11 an intimate of Mr. Schwartzbaum, and the government asked
12 him, do you know anything about any payments, and he said
13 absolutely not.

14 Do you know of any payments to Jaffee? Abso-
15 lutely not. So Bittman, of course, did not testify as to
16 the charges in this indictment. Who else do we have?
17 Jaffee.

18 We know that Jaffee didn't testify to the
19 charges in this indictment. Jaffee was brought here to
20 testify in an attempt to persuade this jury that if he
21 got money from Schwartzbaum, and there is not proof that
22 he got any money from Schwartzbaum except Glasser's
23 testimony, and I will come to that in a minute, so Jaffee
24 does not corroborate or support the charges in this indict-
25 ment, not a bit.

2 And Mr. Chambers, does he corroborate the
3 charges in the indictment? Of course not. He is here to
4 attempt to show the jury that Mr. Schwartzbaum had told him
5 that he paid. Nothing about Mr. Hoff.

6 Of course it doesn't support the charges in
7 the indictment. I think that is all the witnesses other
8 than Mr. Glasser. Now let's come to Mr. Glasser.

9 I think, your Honor, the test is whether or not
10 you should let the jury decide the credibility of this
11 witness on his testimony. I say that perhaps in other
12 cases the Judge probably will say, well, it is a question
13 of fact for the jury and we will let the jury decide. Not
14 in this case, your Honor. It can't be. Because his testi-
15 mony from start to finish is incredible.

16 THE COURT: Isn't credibility an issue that I
17 must charge the jury on?

18 MR. ESBITT: Yes, generally. You may remember,
19 Judge, I have said to you that judges will normally sub-
20 mit a question of credibility to the jury. But I submit
21 to your Honor that when the testimony of the only witness
22 the government has produced in two years of investigations,
23 not a single witness to corroborate Mr. Glasser, not one --

24 THE COURT: You are not suggesting that the
25 Federal Rule requires corroboration?

MR. ESBITT: I am not, your Honor. What I am suggesting to your Honor is the complete lack of credibility on the part of a witness, and if your Honor is convinced, and I hope to convince you -- is there a time limit on this, Judge?

THE COURT: Five minutes.

MR. ESBITT: That's not very much, but I will do the best I can.

THE COURT: That's five minutes more.

MR. ESBITT: Thank you.

What I am saying to you, Judge, is normally a Judge would leave the question of credibility to a jury. But where witness' testimony is so incredible, as this witness' testimony is, then I believe your Honor is absolutely required, and I use required in the legal sense, in the advocacy sense, your Honor, I do think that your Honor would not only be required but justified in saying to this court, in saying on the record, that this witness' testimony is so unbelievable that it wouldn't be fair to submit that issue to a jury.

It has been a short case, your Honor, and I am not trying to sum up at this point. But I do want to bring certain things to your attention about his credibility, even though -- well, it is just unbelievable, and it is

2 incredible in the literal sense of the word, not believable.

3 Now let's see, let's look at the record.

4 THE COURT: Counsel, rather than develop the
5 credibility question, let me interrupt you and cite from
6 United States versus Taylor --

7 MR. ESBITT: May I have the citation?

8 THE COURT: The date of the citation is July 6,
9 1972, Second Circuit.

10 The Court states --

11 MR. ESBITT: May I have the citation of the
12 case?

13 THE COURT: I can only give you the date,
14 July 6, 1972.

15 MR. ESBITT: We don't have the citation? The
16 name?

17 THE COURT: United States versus Ralph Kelly
18 Taylor.

19 The Court states, Judge Friendly:

20 "Our ruling in no way affects the established
21 rule that the weighing of credibility is for the jury, not
22 the Judge. See United States versus Weinstein 425 Fed.
23 Second 704, 713, 714, 1971 Second Circuit case, cert denied,
24 1972."

25 MR. ESBITT: Judge, I said that initially. I said

2 normally that is true.

3 THE COURT: To make a finding of incredibility
4 is to make a finding about credibility. That is not my
5 function. That is the jury's function.

6 MR. ESBITT: I don't have authorities with me,
7 Judge, and I will be glad to check this out during the noon
8 recess, but it is my understanding that when the testimony of
9 a witness -- and this is the only witness on the issues in
10 this case -- is so unbelievable, that your Honor is com-
11 pletely justified in refusing to submit this issue of
12 credibility to the jury.

13 The testimony has shown that not only did this
14 witness not recall what happened five years ago, and he could
15 not recall what happened two years ago, and he could not
16 recall what happened at the last trial before Your Honor,
17 but this witness couldn't remember from day to day and from
18 hour to hour, and completely destroyed his own testimony by
19 contradicting himself time and time again.

20 He couldn't recall that he had a meeting with Mr.
21 Fryman and with Mr. Sabetta last Tuesday, and when his
22 recollection was refreshed and was asked what happened at
23 that meeting and asked was anything said about Schwartzbaum,
24 nothing, except that Schwartzbaum was sick. We know that
25 wasn't true. He couldn't remember it, and the way he

remembered it, your Honor will recall, is when Mr. Fryman showed him Mr. Fryman's memorandum. He said "Oh, yes, I remember it now."

The record is replete with lies, distortions and absolute failure to remember from day to day. The credibility of that kind of a witness is not to be left to a jury. I submit that a Judge should determine that when the credibility is so unbelievable and so overwhelming that there is no issue for this jury to decide.

THE COURT: All right. It so happens that the law of this Circuit does not agree with you and I am bound by the law of the Circuit. Let me read from Judge Pridiman's formulation of the proposition in Curley versus the United States, 160 Fed. Second 229 at 232 to 233, District of Columbia, cert denied 331 U.S. 837. It reads as follows:

"The functions of the jury include the determination of the credibility of witnesses, the weighing of the evidence and the drawing of justifiable inferences of fact from proven facts. It is the function of the Judge to deny the jury any opportunity to operate beyond its province.

"The jury may not be permitted to conjecture merely or to conclude upon pure speculation or from passion, prejudice or sympathy. The true rule, therefore, is that a trial judge in passing upon a motion for directed verdict of

acquittal must determine whether upon the evidence, giving full play to the right of the jury to determine credibility, weigh the evidence and draw justifiable inferences of fact, a reasonable mind might fairly conclude guilt beyond a reasonable doubt.

"If he concludes that upon the evidence there must be such a doubt in a reasonable mind, he must grant the motion. Or, to state it another way, if there is no evidence upon which a reasonable mind might fairly conclude guilt beyond a reasonable doubt, the motion must be granted.

"If he concludes--" and this I think is the subject of the rule--"that either of the two results, a reasonable doubt or no reasonable doubt, is fairly possible, he must let the jury decide the matter."

I find here that either of those two results is possible and I deny your motion. We will bring back the jury and proceed from there.

MR. ESBITT: Would it not be an appropriate time for a ten minute recess?

THE COURT: Yes. Take a few minutes.

(Recess.)

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(Jury present.)

THE COURT: Counsel, the case is with you. What is your wish?

MR. ESBITT: I do have a witneys to call, your Honor.

THE COURT: Fine. Call your witness.

MR. ESBITT: Mrs. Ruth Schwartzbaum.

MR. FRYMAN: Your Honor, could we have a side bar conference?

THE COURT: Yes.

(In the robing room.)

MR. FRYMAN: Your Honor, I believe this witness has been present in the courtroom during some of the early part of the trial.

THE COURT: That's true.

MR. FRYMAN: As I understand your ruling, the witnesses who were going to appear should not have been present.

MR. ESBITT: May I explain that, your Honor?

THE COURT: Yes.

MR. ESBITT: She came here, first of all, when Mr. -- I don't even recall that on the record you said that all witnesses will be excused, but it doesn't matter.

THE COURT: I not only said it but I repeated it

1 during the trial.

2
3 MR. ESBITT: When she came into Court, which was
4 Monday afternoon, I had no intention of calling her as a
5 witness. She was not contemplated to be a witness. As
6 she sat in the courtroom and heard Mr. Glasser's testimony
7 that as to payments in Christmas week of 1968 and 1969,
8 at the end of the day she came to me and her husband, and
9 they said "We were not in New York in those weeks."

10 That's all. That is all she is going to testify
11 to.

12 THE COURT: Is this the wife of the defendant?

13 MR. ESBITT: Yes.

14 THE COURT: I will ask you, Mr. Fryman, to sub-
15 mit a proposed -- a request to charge with reference to
16 the matter. I will allow the witness to testify but I
17 think I had better touch on her presence in the courtroom
18 at least in the charge.

19 MR. ESBITT: Judge, the rest of the testimony of
20 other witnesses has nothing to do with what her testimony
21 is going to be. It is only going to be with respect to that
22 week.

23 THE COURT: Are you saying that she was not in the
24 courtroom when there was testimony by government witnesses
25 regarding payments during that week?

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2 MR. ESBITT: There was only one government wit-
3 ness, and that was Glasser.

4 THE COURT: Was she in the courtroom then?

5 MR. ESBITT: Yes, I am sure she was.

6 THE COURT: Then I have to deal with it. I have
7 to give the jury some instruction. They are entitled to
8 it, just as you would be entitled to it if they had had
9 one of theirs in the courtroom in a similar situation.

10 MR. ESBITT: I just wanted your Honor to know that
11 this was not -- she was not in the courtroom intentionally
12 to listen to Glasser's testimony.

13 THE COURT: I don't think anyone is suggesting
14 that. What they are saying is they know she was in the
15 courtroom and they know that she heard the testimony of
16 witnesses and now she is called as a witness. It is something
17 they have to deal with too.

18 (In open court.)

19 THE COURT: Swear the witness.

20 R U T H S C H W A R T Z B A U M, having
21 been first duly sworn, was examined and testified
22 as follows:

23 DIRECT EXAMINATION

24 BY MR. ESBITT:

25 Q Mrs. Schwartzbaum, will you please raise your

voice so that all of us can hear your testimony?

A Yes.

Q Are you related to the defendant?

A Yes, I am.

Q What is your relationship?

A Wife.

Q How long have you been married?

A 29 years.

Q Do you have any children?

A We have three children.

Q How old are they?

A 27, 24 and 18.

Q Would you tell us where you were during Christmas week of 1968?

A During Christmas week of 1968 we were vacationing in Miami, Florida.

Q Was Mr. Schwartzbaum, your husband, with you during that time?

A Yes, he was.

Q During what period of time, if you can recall?

A To the best of my recollection, we were there about eight to ten days.

Q Can you tell us approximately when you arrived there with your husband and when you left?

2 A We made a practice of spending Christmas in
3 Florida with my family. So to the best of my recollection
4 we would have left about the 21st of December.

5 Q Of 1968?

6 A 1968.

7 (Defendant's Exhibit M was marked for identif-
8 ication.)

9 Q Mrs. Schwartzbaum, I show you Defendant's Exhibit
10 M for identification and ask you whether or not you have a
11 joint account with your husband?

12 A Yes, I do.

13 Q Is that joint account on this bank that this
14 exhibit I have shown you refers to?

15 A Yes.

16 Q Do you remember -- who signed this?

17 A Mr. Schwartzbaum signed it.

18 Q Were you present when it was signed?

19 A Yes.

20 Q Where was it signed?

21 A It was signed at the Doral Country Club in
22 Florida.

23 Q That's where you were during that period of
24 time?

25 A We spent our vacation, yes.

2 Q Do you remember on what day of your vacation
3 this check was signed?

4 A It was on the end of December, the 28th of
5 December.

6 MR. ESBITT: I offer it in evidence.

7 MR. FRYMAN: No objection, your Honor.

8 THE COURT: Received.

9 (Defendant's Exhibit M was received in evidence.)

10 Q I call your attention to the Christmas week of
11 the next year, 1969. Can you tell us where you were that
12 week?

13 A That week, to the best of my recollection, we
14 were at the Doral Country Club in Miami, Florida.

15 Q With your husband?

16 A With my husband and family.

17 Q Can you recall when you and your husband arrived
18 at the Doral Country Club in Florida?

19 A I would say approximately the same time, though
20 the dates did not fall the same, I would say towards the
21 20th or 21st of December, about that, so we could cover
22 the Christmas week.

23 Q Going back to 1968, Christmas week, was your
24 husband there during an entire 10-day period?

25 A Yes. We always left together and returned together.

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2 Q Did the same happen in 1969?

3 A Yes.

4 Q And do you have any check or checks referring to
5 the payment of your bill in 1969?

6 A I cannot locate the checks at the moment. It is
7 possible that they were paid in another fashion. I would
8 think American Express or some other means, but I am absolutely
9 certain that this was paid in 1968 by a check to the
10 Doral.

11 Q Is it your best recollection that you and your
12 husband and family were at the same hotel during the same
13 eight or ten-day period in 1969?

14 A Yes.

15 Q I wouldn't ask you as to your knowledge of the
16 reputation of your husband, Mrs. Schwartzbaum.

17 MR. ESBITT: No further questions.

18 THE COURT: You may inquire.

19 MR. FRYMAN: No cross examination, your Honor.

20 THE COURT: Step down.

21 (Witness excused.)

22 MR. ESBITT: Your Honor, at this point I request
23 a conference in chambers.

24 THE COURT: All right.

25 (In the robing room.)

MR. ESBITT: Your Honor, I am reluctant to call a government attorney as a witness, but I think in this case I have no alternative, and I wanted it out of the presence of the jury so as not to have any impact on the jury, but I intend to call as my next witness Mr. Fryman.

THE COURT: Do you want to make an offer of proof?

MR. ESBITT: Yes, sir. The questioning of Mr. Fryman relates to a most unusual exhibit, GX 3511.

Your Honor will recall that in questioning Mr. Glasser who was absolutely unable to recall the meeting of the 26th, and the record is clear about it, and if you want a reference to it, hear: "You never told Mr. Sabetta or Mr. Fryman that you had told him," meaning Schwartzbaum, "the name of the official?"

No, I did not.

You say that under oath?

Yes."

That is just one small example. You will recall also that Mr. Glasser couldn't recall anything. But he certainly couldn't recall that. So Mr. Fryman used this memorandum to refresh his recollection. That doesn't appear so unusual so you may wonder why am I calling Mr. Fryman. The record shows beyond any doubt that this witness never told a single person, neither Mr. Hinckley, the grand jury,

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2 Mr. Sabetta, the first trial or in his notes, nowhere does
3 does it appear anywhere as a matter of record that he had
4 mentioned to anybody, had mentioned to Schwartzbaum Hoff's
5 name.

6 That is crucial in this case, I am sure your Honor
7 is aware and I am sure Mr. Fryman is aware. So the witness
8 testified, of course, at the trial that he told -- but then
9 on cross examination he just didn't remember, didn't recall,
10 and finally he said no. Then Mr. Fryman attempted to
11 rehabilitate him. I objected to showing that to a witness
12 because that's just like showing him his trial notes and
13 saying does this refresh your recollection.

14 But that is past. That in itself I don't think is
15 too significant, but I tell you what is most unusual about
16 it, Judge. There had never been a memorandum in this file
17 yet of an interview with a witness except this one. Not
18 one. Mr. Fryman interviewed witnesses and never dictated
19 a memorandum like this. He interviewed Mr. Bittman and
20 never dictated a memorandum. He interviewed Mr. Chambers
21 and never dictated a memorandum.

22 Why is this significant? Mr. Sabetta interviewed
23 the witness, Mr. Glasser, never dictated a memorandum.

24 MR. SABETTA: I just made handwritten notes.

25 MR. ESBITT: Why? Why? Why? I want the jury to

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2 know. I have a right to question him. I regret that I
3 am calling adversary counsel. When I received that as part
4 of the 3500 material and looked it over, I did not know
5 and had not been informed that Mr. Fryman was going to be
6 the trier of the case. I thought Mr. Sabetta was.

7 It doesn't make any difference. I'm sorry, Judge,
8 I don't like to put -- I have been an Assistant U.S.
9 Attorney, I know the problems of the office and I know the
10 reluctance I have and any lawyer would have to call the
11 adversary attorney on the witness stand. I have no choice.

12 THE COURT: Do you want to be heard on it?

13 MR. FRYMAN: I think this matter has also been
14 covered in the testimony of Mr. Glasser. Mr. Glasser
15 testified on direct as to this meeting and as to what he told
16 Mr. Schwartzbaum. Mr. Esbitt covered it on cross. He showed
17 him -- it was gone into on redirect. I agree with Mr.
18 Esbitt, it is a most unusual procedure that he is seeking
19 to go through here, but I have no qualms, if he --

20 MR. SABETTA: I just have a question. I am not
21 sure what it is Mr. Esbitt wants to elicit. It may be
22 something that can be stipulated to.

23 MR. ESBITT: Oh, no.

24 MR. SABETTA: What is it that you want to elicit?

25 MR. ESBITT: I want to find out who is telling

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2 the truth, Mr. Glasser or Mr. Fryman.

3 MR. SABETTA: We can get a stipulation that
4 this document represents --

5 MR. ESBITT: No, no, no. I want to know why we
6 have this document in this case. I never had it before.

7 MR. SABETTA: That is an improper question about
8 why this document was created.

9 MR. ESBITT: It is for the Judge to decide on
10 whether he is --

11 MR. SABETTA: I am making argument now.

12 MR. ESBITT: I know you are, and I want to be
13 able to sum up to a jury. I have an obligation to my
14 client and so do you to determine the truth.

15 MR. SABETTA: Do you mean to tell me that every
16 time a government attorney makes notes or types up a
17 memorandum, you have the right to ask him why in one case
18 did he use the mechanism of handwritten notes and why in
19 another case he chose either to type it himself or to dic-
20 tate it to someone else? What significance does that
21 make?

22 MR. ESBITT: I'd rather ask the Judge for per-
23 mission to call Mr. Fryman and I would like to ask the
24 questions. I don't think it requires an explanation from
25 me as to why I want to question him.

2 MR. SABETTA: I think it does, because it is a very
3 unusual process to call the prosecutor in the case. I
4 think you have a duty to make a showing of why you want
5 to call him.

6 MR. ESBITT: I think I have made a showing, your
7 Honor. I don't think I have to explain it to Mr. Sabetta.

8 MR. SABETTA: I guess I am dense because I don't
9 fully understand what it is you intend to ask, Mr. Esbitt.
10 Could you help me as a member of the court and elicit --

11 THE COURT: Why don't you simply restate what you
12 have indicated was your basis for your request, counsel.

13 MR. ESBITT: If your Honor please, there is a
14 sharp conflict of testimony in this case between what the key
15 witness for the government, Mr. Glasser, has testified to
16 and what he has in the memorandum, a key question. What
17 is that key question? Whether Glasser told Schwartzbaum
18 Hoff's name. It never appeared in the record anywhere.

19 Where does it show up for the first time in this
20 memorandum?

21 MR. FRYMAN: What's the conflict, Mr. Esbitt? We
22 can get the transcript of Mr. Glasser's testimony. He
23 said he told that in that conference.

24 MR. ESBITT: I have the transcript. I have the
25 transcript. He denied that he told you anything. I will

refer you to page 195.

THE COURT: Are you both referring to the same transcript?

MR. SABETTA: I think to be fair to Mr. Esbitt, I think you are right, that Mr. Glasser did say at one time he did say it and another time said he didn't say it, he said he wasn't sure. It is not as if he testified only once about it.

MR. ESBITT: Let me refresh you on this. You never told Mr. Sabetta or Mr. Fryman that you had told them the name of the official? Keep in mind that part there, and that's the part he elicited from the witness.

"No, I did not.

You say that under oath?

Yes."

MR. SABETTA: You are skipping the other questions directed to the same subject. You do admit, do you not, that he did say in other places in the same record --

MR. ESBITT: Absolutely. Sure, there is a conflict between that. There is also a conflict between his testimony and the statement in the memorandum. I think I have a right to question Mr. Fryman --

MR. SABETTA: Do you want to put this document in evidence?

1 MR. ESBITT: I will decide that.

2 MR. SABETTA: I am offering that as a possibility.

3 MR. FRYMAN: I suppose if Mr. Eshitt questions
4 me on direct, will Mr. Sabetta have the right to pursue
5 cross and to put in exhibits, your Honor?
6

7 MR. ESBITT: Of course.

8 THE COURT: If it develops that you take the
9 stand, yes.

10 MR. ESBITT: I have no objection to Mr. Sabetta
11 taking over the prosecution.

12 THE COURT: Let me see if I can just focus on this
13 a moment. The situation is that Mr. Glasser at one point
14 testified that he never told Schwartzbaum that Hoff had
15 said it was okay.

16 MR. ESBITT: That is one. There are other things
17 too in that memorandum in which there are substantial
18 conflicts. But that is a key one. I agree.

19 MR. SABETTA: Your Honor, I don't mean to inter-
20 rupt the Court, but I think maybe if I can recall, and I
21 am not sure I will be able to do so accurately, my memory,
22 and Mr. Fryman can correct me on this too, is that chron-
23 ologically it went something like as follows, on his direct
24 examination Mr. Glasser said that he did mention the name of
25 Hoff to the defendant Schwartzbaum in connection with the
second conversation after he got the okay from Mr. Hoff.

1
2 Then on cross I believe he said, and Mr. Esbitt
3 can refresh my memory perhaps more completely, initially
4 that he wasn't sure, then he said no, he did not say the name
5 Hoff, then on redirect Mr. Fryman showed him the copy of the
6 memorandum which your Honor has now and Mr. Glasser was
7 able to refresh his memory and said "Yes, I now recall
8 again that I did say to Mr. Schwartzbaum that Mr. Hoff had
9 said okay."

10 So there is no question but that his testimony is
11 at variance in the fashion that I described it. I think that
12 is more or less chronologically as it proceeded.

13 THE COURT: What are the other points in here?

14 MR. ESBITT: The second point is the one of con-
15 tracting. He had testified at a previous trial, you will
16 recall, that he didn't say a word about contracting. Now
17 here he says he did and in his testimony he denied that
18 he discussed that with Mr. Fryman. In fact, he couldn't
19 even recall the meeting until Mr. Fryman had taken a
20 circuitous route in getting him back to the point where he
21 remembered there was a meeting. Then he denied there
22 was any conversation about Schwartzbaum.

23 Then Mr. Fryman showed him this memorandum. Now
24 everything is as clear as day. It sounds like I am suming
25 up. Maybe it is part of my summation. I think I have a

2 right to question Mr. Fryman on that.

3 THE COURT: Would you mind showing me that por-
4 tion of this memo? We are referring to what is marked
5 Government's Exhibit 3511.

6 MR. ESBITT: If you read the third paragraph,
7 your Honor, you will see that Mr. Fryman is apparently
8 being told by the witness that in his conversation with
9 Schwartzbaum, Schwartzbaum had mentioned not only importing
10 but contracting.

11 THE COURT: I recall that such was his testimony
12 here also.

13 MR. ESBITT: Yes, of course. But on cross -- that
14 had not been the prior testimony.

15 THE COURT: You brought out on cross examination
16 that he had not mentioned it on some prior occasion.

17 MR. ESBITT: The trial before you. So here for
18 the first time we have him testifying to that.

19 MR. SABETTA: No, sir. He also testified to
20 that in the grand jury.

21 MR. FRYMAN: Back in 1972.

22 THE COURT: So what is your offer with respect
23 to --

24 MR. ESBITT: I want to question Mr. Fryman about
25 that meeting with him, whether he took notes, when he dictated

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2 the memorandum, and so on.

3 THE COURT: I am going to deny the request.

4 MR. ESBITT: In toto?

5 THE COURT: In toto. You have your exception, of
6 course.

7 (In open court.)

8 THE COURT: Now, Mr. Esbitt, what is your wish?

9 MR. ESBITT: The defense rests, your Honor. We
10 renew our motions at the end of the entire case previously
11 made at the end of the government's case.

12 THE COURT: Same ruling.

13 The government rests on its entire case?

14 MR. FRYMAN: Yes, your Honor.

15 THE COURT: The defendant rests on his entire
16 case?

17 MR. ESBITT: Yes, sir. Would you entertain a
18 suggestion, your Honor? In view of the time I would rec-
19 ommend to the Court, if it is convenient for the Court and
20 all concerned, that we take our lunch break now, resume at
21 whatever time your Honor suggests, and then afterwards we
22 can start with our summations and your Honor's charge.

23 THE COURT: All right. What follows is the clos-
24 ing statement by the government, the closing statement by
25 Mr. Esbitt, if he chooses to make one and then the Court's

instruction as to the law. Then the case is yours for deliberation. I will ask you again not to form or express an opinion about the case, keep an open mind until you have heard the closing arguments and the Court's instructions as to the law.

Please return at 2:00. I wonder if we could make it 1:15.

MR. ESBITT: Your Honor, it is awfully difficult just to find a lunch place at this hour, and I would like a few minutes just to prepare my summation.

THE COURT: All right. 2:00. You might wish to make some phone calls to indicate that you probably will be home tonight a little bit later than normal. Lead the jury out, please, Madam Forelady.

Will counsel please remain in the courtroom.

(Jury left the courtroom.)

THE COURT: As soon as I get some papers down from chambers I can give you my rulings on requests to charge.

MR. ESBITT: May I just bring one matter to your attention? I assume GX is a Court's Exhibit.

THE COURT: Government's Exhibit.

MR. ESBITT: It is not in evidence? --

MR. SABETTA: No.

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2 MR. ESBITT: There was reference to this exhibit --

3 THE COURT: Do you want to make it as a Defendant's
4 Exhibit for identification?

5 MR. ESBITT: I want to be sure that we have the
6 proper reference to it in the record in case it is necessary
7 to make reference to it on appeal.

8 THE COURT: Mark it for identification.

9 MR. ESBITT: This one is marked up. Perhaps the
10 government has one that is clean.

11 MR. FRYMAN: Your Honor, the memorandum that Mr.
12 Esbitt is referring to has previously been marked as
13 Government's Exhibit 3511 for identification, I believe,
14 as your Honor indicated in the robing room.

15 THE COURT: That is sufficient for review, if
16 required, is it not?

17 MR. ESBITT: Yes, sir.

18 THE COURT: Gentlemen, if you have your requests
19 before you, I will give you the ruling or at least most of
20 them.

21 Government's request number 1 is granted in
22 substance.

23 Two is granted in substance.

24 Three is granted in substance as to the first
25 paragraph, denied as to the second paragraph.

2 MR. ESBITT: Was that the end of your comment with
3 respect to request number three?

4 THE COURT: I am also thinking of something in
5 connection with the first paragraph with respect to a
6 request you had. Essentially it is granted in substance
7 as to the first paragraph and denied as to the second, as
8 far as request number three is concerned.

9 Request number four is granted in substance.

10 Five is granted in substance.

11 MR. ESBITT: Is your Honor ruling on my objections
12 to government's request number four or will that be
13 covered in your --

14 THE COURT: I will cover the provision in your
15 first paragraph which you would entitle an objection to
16 request number four, but I am going to grant -- the ruling
17 is I am going to grant request number four in substance.
18 I touch on this in another place and I think I deal with
19 it satisfactorily in terms of the point you are making,
20 but you will have to make your judgment about that once
21 you have heard the charge in that regard.

22 Request number five is granted in substance.

23 MR. ESBITT: May I be heard on that? I think,
24 your Honor, that that is clearly -- this request is clearly
25 in error. The jury must believe not only that the payment

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2 was made to Glasser and received and accepted by Hoff, but
3 that the government must prove beyond a reasonable doubt
4 that the defendant knew it was going to Mr. Hoff.

5 They can't prove their case by just saying, well,
6 we gave it to a union official or it is to be implied from
7 the testimony. The charge is that it was paid to Hoff and
8 not to a union official. The government must prove that.'

9 I submit that this is completely in error.

10 THE COURT: I must tell you, sir, that I consider
11 your statement to be not a correct statement of the law as
12 it applies in this case. I have considered the point. I
13 do deal with it but not -- I do not entertain your
14 objection and I am going to grant request number five
15 and, of course, you will have your exception to that as well.

16 As to request number six, it is granted in substance
17 also seven and eight and nine..

18 MR. ESBITT: Is nine granted as is?

19 THE COURT: Granted in substance.

20 MR. ESBITT: That, of course, is the same objection
21 that I made before, and that is it is not sufficient, I
22 submit, that the proof be that payments were made to Jack
23 Glasser knowing that it was to be conveyed to one or more
24 union officials. --

25 I submit the proof must be in accordance with the

indictment, and that is that Mr. Schwartzbaum, it must be proved, knew it was going to Mr. Hoff.

THE COURT: No, I am not going to charge that. I am going to charge that the jury must find that the defendant knew or had reason to believe that the payments were to be made to a union official or representative. I am going to further charge that one cannot close his eyes to the likely results of certain acts which occur. You can't close your eyes and say "Don't tell me about it. I don't want to know. If I don't know I can't be convicted of anything."

You can't do that.

MR. ESBITT: I am not suggesting that, your Honor.

THE COURT: The jury may, if it chooses to, draw certain inferences. I am not charging in the manner in which you have urged, namely that there must be specific knowledge on the part of the defendant that he knew that a payment of money to Glasser would be a payment of money to Hoff.

But you will hear more in that regard when --

MR. ESBITT: I am sure I will be disappointed.

THE COURT: I will hear you further when I have given the charge.

MR. ESBITT: It is too late then, your Honor.

THE COURT: The law does not say it is too late,

as you know. You will have an opportunity at that time to speak again to the question.

MR. ESBITT: I just want to make the record clear as far as my position is concerned, and that is again I reiterate that the indictment says payment not to a union official, unnamed, but it says payment to Hoff. If this witness had testified that he got the money and didn't give it to Hoff but gave it to Mr. Gold, would your Honor suggest in those circumstances that he could be convicted on that testimony?

THE COURT: I am not going to argue the point, counsellor. If I am in error, you know who corrects the error. I have heard you. I told you my position, I have told you what I am going to do. Request number 10 is granted in substance.

As to 11, granted in substance, although interest of defendant will not be charged as not applicable. What about witnesses equally available to both sides, I see no reason to give that.

MR. FRYMAN: I don't believe that's necessary here, your Honor.

THE COURT: That will not be charged. The supplemental request as to Mr. Jaffee's testimony is granted in substance. The defendant's requests to charge:

Request number one is granted in substance.

Request number two is granted in substance, except as to the last paragraph. I will not charge moral certainty because that is not required in the Second Circuit.

MR. ESBITT: I will not make the reference to the jury about it.

THE COURT: Thank you.

Request number three is granted in substance.

Request number four is granted in substance.

Number five is granted in substance. However, while I do charge with respect to the care that must be given by the jury to the testimony of a witness who has been granted immunity, I am not going to charge with reference to the testimony of an informer, as you request.

MR. ESBITT: I am not sure whether I have it in here or not, but if I do not, I would ask your Honor to charge the jury that the testimony of an alleged co-conspirator is suspect. You read the case, I showed it to you, you referred to it in a memorandum the other day.

U.S. against Padgent. Is suspect.

THE COURT: That is not in here, counsel. I am dealing with what you handed up. What you handed-up had reference to the testimony of an informer. I am not going to charge with reference to testimony of an informer.

2 You also make reference to persons who obtain
3 immunity from punishment. I am going to charge that. I will
4 charge them that the impact of a grant of immunity must be
5 weighed carefully and that such testimony must be scrutinized
6 with special care, and, further, I go into the business of
7 how they may consider motive, et cetera. So such will
8 be the ruling on that. As to that portion of your request
9 number five in the last paragraph, I am not going to charge
10 that the testimony of a witness may be discredited or im-
11 peached by showing that the witness has committed crimes.
12 What we are up against here, I understand what you
13 want to do.

14 The first, that's a legal conclusion. Secondly,
15 we have the Second Circuit Bad Acts Rule which you know is
16 a rather strong rule against bad acts. You may show
17 convictions. I know that you have to deal with it in some
18 fashion. I think you can anticipate an objection by your
19 adversary if you should move in the direction of saying that
20 the witnesses who testified who were granted immunity have
21 admitted that they committed crimes.

22 You may find I am sure some other way to refer
23 to --

24 MR. ESBITT: I will not do it in that manner. I
25 will not do it in the manner of saying because they were
granted immunity they have admitted the crimes. They have

2 admitted the crimes aside from immunity. They have done
3 that, Judge. It is in the record.

4 THE COURT: Counsellor, there are all kinds of
5 objections throughout the trial to the references to whether
6 they were crimes. We dealt with it by allowing -- I allowed
7 you to elicit that the witnesses understood that they had
8 done something that was contrary to the law, but they
9 haven't been prosecuted and they haven't been convicted
10 and you may not impeach normally in this circuit, as you
11 know, using bad acts.

12 They have not been convicted. I am bound by the
13 Second Circuit's ruling in this respect. Do you want to
14 be heard on it?

15 MR. FRYMAN: Your Honor, Mr. Sabetta will speak
16 on this matter.

17 MR. SABETTA: Your Honor is right in the state-
18 ment of the principle enunciated about bad acts. However,
19 in fairness to Mr. Esbitt, if he can make this argument,
20 although I think there is kind of a temporal question, that
21 is a time-related question, but it is true that counsel may
22 explore in cross examination and also in summation conduct
23 on the part of government witnesses which has been unlaw-
24 ful or contrary to law for which they have not been
25 prosecuted on the theory that this goes to their motive to

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2 testify favorably for the government.

3 THE COURT: Those bad acts are permitted, Mr.
4 Esbitt.

5 MR. SABETTA: However, there is a sort of related
6 question I think in this case, and it comes about I think
7 because of this fact. Normally the way cross examination
8 would proceed in those cases is counsel would ask the witness
9 whether he had occasion to talk about these unlawful acts
10 he had committed with one or more agents of the government
11 and then would establish that at least inferentially, if
12 not explicitly, that this was part of the understanding
13 between the witness and the government, that in return for
14 his testimony he would not be prosecuted for these acts,
15 and that goes obviously to his motive to testify favorably.

16 Where, however, the witness makes no statement
17 of acts which are unlawful to a government agent until
18 after he has been granted immunity, that raises another
19 kind of issue, but then there is a question whether those
20 unlawful acts admitted after the grant of immunity can be
21 said to have gone to his motive in any way.

22 Frankly, I would prefer from the government's
23 point of view to err on the side of caution here and let
24 Mr. Esbitt go a little further than maybe the strict letter
25 of the law allows, because I am not sure how the Second

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Circuit comes out on that question. I have not seen a case right on point on that.

THE COURT: We know you are certainly permitted to relate acts which are said to be in violation of the law to motive. That you will certainly be permitted to do.

MR. ESBITT: Whether I refer to it as motive or however I refer to it, I may not mention what it is for at all, but I believe I have the absolute right to sum up to the jury and tell them that the record is clear that Mr. Glasser, for example, has committed 45 crimes.

THE COURT: I tell you what, counsellor, obviously the tone of the conversation is that we appreciate your difficulty and acknowledge that you certainly have an opportunity to deal with this in some appropriate fashion.

If you want to proceed in that fashion, go ahead. If there is an objection in the middle of your summation, I will have to deal with it in front of the jury. We are trying to be helpful because we know there is a problem. We have the rule about convictions. I don't think that rule bars you because obviously you are inquiring with respect to acts relating to motive.

That will be your point, I am sure, to try to show that the witnesses were in some fashion motivated based upon prior acts which you succeeded in getting them to

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2 acknowledge they understood to be in violation of the
3 law. I think that's the record. So you will be allowed
4 leeway. I do think the use of the word crimes, as such,
5 is troublesome, but you are not that far from unlawful
6 acts, violation of law.

7 MR. ESBITT: I understand that. I don't want to
8 be in a position of suming up and then having counsel
9 object. I think the purpose of this discussion, and frankly
10 it is helpful to me, is to resolve that now so I am not
11 interrupted during the course --

12 THE COURT: I would certainly hope so.

13 MR. SABETTA: I think from the government's
14 point of view, we would have no objection to Mr. Esbitt
15 saying something to the effect that both Mr. Glasser and
16 Mr. Jaffee committed acts for which they could have been
17 prosecuted. They understood that they might have been
18 prosecuted for those, but they were not.

19 MR. ESBITT: I will point out that, sure, they
20 committed these acts and they were granted immunity and
21 therefore they can't be prosecuted.

22 MR. SABETTA: We agree it would be inappropriate
23 to say they admitted crimes, because that is a legal
24 finding.

25 MR. ESBITT: Would you prefer I say unlawful

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acts?

MR. SABETTA: I think that is appropriate.

THE COURT: He has suggested words that we have pretty much decided that we are going to use. We are going to use the expression in the charge acts for which they could have been prosecuted. You do what you think best.

MR. ESBITT: I will use the expression unlawful acts. I will try to restrain myself, and it is not easy, but I will.

THE COURT: You do as you think best.

As to six, granted in substance.

Seven is granted in substance.

Eight is granted in substance, except that the numbers of the counts in the indictment will be changed in order to use a clean --

MR. ESBITT: That will be one, two, three?

THE COURT: Yes. The last sentence of the first paragraph will therefore not be relevant. I will further not charge as requested regarding moral certainty. As to nine, granted in substance.

Ten is granted as to the first paragraph, denied as to the second. Very frankly, I have a little trouble with that. I am going to try to weave the *malum prohibitum* and the *malum in se*, or something like it, in there to

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2 balance that because it is essentially malum prohibitum,
3 is it not, and I don't want to leave any impression that
4 it is anything other than that.

5 MR. ESBITT: As I made the observation before,
6 in any event, your Honor I believe must charge the jury
7 that regardless of whether it is malum prohibitum, your
8 Honor must charge the jury that the government prove every
9 element of the case beyond a reasonable doubt.

10 THE COURT: That will be done. You request the
11 definition of willfully in number 11. I am going to charge
12 wilfully but not as you have requested it. It is denied as
13 requested, but I will charge wilfully.

14 12 is granted in substance. It is denied with
15 reference to your paragraph entitled comments to counsel.
16 I perhaps cover it in some other fashion. It is granted in
17 substance with respect to your paragraph entitled objections
18 and rulings.

19 13 is granted in substance.

20 14 is granted in substance but denied as to the
21 third sentence.

22 15 is granted in substance.

23 Also 16. 17 is denied as such. The language of
24 17, as such, is denied. I think I handle it in some other
25 fashion, but I will not charge 17.

2 MR. ESBITT: Your Honor, with respect to 17, is
3 your Honor incorporating in some other fashion the last
4 paragraph of 17?

5 THE COURT: No. I try to avoid those requests
6 whether they come from the government or the defendant. It
7 is a little too speechy for me.

8 18 is granted in substance.

9 MR. ESBITT: May I make a comment, your Honor?

10 THE COURT: Yes, sir.

11 MR. ESBITT: I need hardly make an exception
12 because the record has indicated what I objected to, what
13 I have asked for and what you have denied. With respect to
14 request number 13, consider only the offense charged, this
15 was prepared before we heard the evidence, and I would
16 like your Honor to include in that, if you have not already
17 done so, a statement to the effect that there has been
18 testimony during the course of this trial that the defendant
19 had made payments to Mr. Glasser during 1968 and that there
20 is no charge in the indictment for 1968 and the defendant is
21 not on trial for that, and therefore they should not consider
22 it as a matter on which they have to decide his guilt or
23 innocence.

24 Also I ask your Honor to include in that the
25 reference to the testimony of Mr. Jaffee who also has testified

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2 to having received money from Mr. Glasser, and that charge
3 should be that that is not a crime charged in the indictment
4 and they must not consider that as a charge and, of course,
5 not bring in a verdict with respect to that.

6 THE COURT: That is granted in substance.

7 MR. ESBITT: May I make one more request, your
8 Honor, and that's the one that I started to say? Your Honor
9 will recall the case of U.S. against Padgent in which the
10 Court has indicated most strenuously that the testimony
11 of an individual like Mr. Glasser who is testifying on
12 the government's theory of being an associate, co-conspirator,
13 call him what you will, we know what he is, and that
14 type of testimony is suspect, that's the language used in the
15 Court of Appeals, suspect.

16 THE COURT: Are you referring to Jaffee, you say?

17 MR. ESBITT: No.

18 THE COURT: Or Glasser?

19 MR. ESBITT: I am referring to Glasser's
20 testimony. You could cover it with respect to Jaffee but
21 I am not too concerned about that. The testimony of Glasser
22 is suspect. That's the language used in the Padgent case.
23 It covers that type of situation. I ask you to include
24 in your charge that the testimony of this type of an
25 individual whose testimony was offered by the government to

2 prove a link between the defendant and a union official,
3 the testimony of that type of an individual is suspect
4 and should be considered as such in the evaluation by the
5 jury.

6 THE COURT: Because he is a co-conspirator?

7 MR. ESBITT: Sure. That is what the Court of
8 Appeals has said. Do you want the reference again?

9 THE COURT: I will take the citation.

10 You realize, if such a request should somehow
11 be granted, we have then introduced before this jury the
12 rather explicit idea of a conspiracy. It is one thing to
13 have the evidence, if I may say so, which they may consider
14 as they see fit which speaks about other acts, I am going
15 to charge as you requested about these other acts that are
16 not charged in the indictment, those pre-1969 acts are
17 offered for certain reasons, I am going to charge with res-
18 spect to that. But if we go into this co-conspirator bus-
19 iness, it means you are requesting that I deal --

20 MR. ESBITT: I will withdraw the request that you
21 make reference to. I am merely explaining the type of
22 individual he is. That is the position he was in, it is
23 what Mr. Fryman and Mr. Sabetta were urging upon your Honor
24 to permit Glasser to testify. --

25 THE COURT: If it is of any help to you I do make

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2 the point that Jaffee has received use immunity, and I
3 tried to develop that, how they must consider it with
4 special care, and I developed that Glasser has received
5 transactional immunity, and I tell them what that means
6 and suggest how they must deal with it with special care.

7 MR. ESBITT: I am not asking you to suggest that
8 he is a co-conspirator, of course not. What I am asking
9 you to do is to instruct this jury that the testimony of
10 Glasser, considering his testimony in this case, is sus-
11 pect, is suspect. That is what the Court of Appeals has
12 said, Judge, in the Padgent case.

13 THE COURT: I will take your citation.

14 MR. SABETTA: My only response is, Mr. Esbitt is
15 more familiar with that case than I am, but my recol-
16 lection is that that case was not focusing on the language
17 of any charge or any question raised with respect to the
18 charge, but rather than -- I say that case did not concern
19 language of a particular charge that was given or not
20 given and had been requested, but rather some other question,
21 maybe an evidentiary question.

22 MR. ESBITT: You are absolutely right.

23 MR. SABETTA: In passing the Court said by way of
24 dictum that the testimony of a witness of this kind is sus-
25 pect and they did not mean to sanction the use by a district

2 court of that kind of language in a charge.

3 I think those are two different questions.

4 I don't know of any case, perhaps you have some authority,
5 wherein the court used that language and the Second Circuit
6 said that that is appropriate or permissible or even the
7 better choice for a charge in this area. I don't think
8 there are any such cases.

9 THE COURT: I am unaware of anything like it.
10 The issue would come up in conspiracy cases where co-con-
11 spirators testify over and over and over again and the cases
12 have been reviewed, and I haven't seen anything such as
13 you are requesting.

14 MR. ESBITT: I had a memorandum. I thought I
15 gave it to you the other day with a photocopy of the pages.

16 MR. SABETTA: 432 Fed 2d 701, Second Circuit,
17 1970, your Honor.

18 THE COURT: I will ask you to do this during the
19 lunch hour and before you sum up. You hand me something
20 in handwritten form which represents the request you would
21 have me give the jury in this regard.

22 MR. ESBITT: All right.

23 THE COURT: Are there any other requests by counsel
24 for the government or counsel for the defendant which
25 represent special instructions to the jury of any kind? If

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2 so, I will take it now, other than this one request. If
3 not, we will adjourn for lunch at this time. We will resume
4 at 2:00.

5 (Court adjourned.)
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2 v.

73 Cr. 616

3 KARL "JACK" SCHWARTZBAUM

4 April 4, 1974

5 10:30 a.m.

6 - - -

7 (In open court-jury present.)

8 THE COURT: Counsel, ladies and gentlemen of
9 the jury:10 Let me thank you for your punctuality and also
11 for paying attention to the evidence as it has been presented
12 during this trial. In serving on this jury you have made an
13 important contribution to the fair and impartial adminis-
14 tration of justice, and for this we are grateful to you.15 I also wish to thank the attorneys for their
16 cooperation during the trial. They have represented their
17 respective positions of the government and of the defendant
18 with serious dedication. I ask you, ladies and gentlemen,
19 to now give me the same degree of attention which you have
20 given thus far so that you might understand the principles
21 of law which are applicable in this case.22 First I'd like to point out some general
23 opinions as to your duty, as to what you may and may not
24 consider during your deliberations. It is my function as
25 I have told you to instruct you as to the law which applies

2 in this case and it is your duty to accept the law as I
3 state it to you, and it is your duty to apply law to
4 the facts as you find those facts to be during your deliber-
5 ations. I ask you not to single out any one instruction
6 alone as stating the law but to consider the instruction
7 as a whole.

8 The logical result of your application of the
9 law to the facts as you find those facts to be should be a
10 verdict of either not guilty or guilty as to each of the counts
11 in the indictment. You are the sole and exclusive judges of the
12 facts in this case. It is you who must pass upon the weight
13 of the evidence, upon the credibility of the witnesses, you
14 must resolve whatever conflicts exist in the evidence and you
15 must draw such reasonable inferences as may be warranted by the
16 testimony and the exhibits in this case.

17 With respect to any matters of fact, it is
18 your recollection and your alone which governs. Anything which
19 counsel for the government or for the defendant may have said
20 with respect to any factual matters is not to be substituted
21 for your own independent recollection of the evidence in this
22 case. Likewise, anything which I have said during the trial or
23 will say during these instructions with respect to factual
24 matters in evidence is not to be taken in lieu of your recollec-
25 tion. It is your recollection of the evidence and yours alone
which controls.

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2 As you approach the performance of your
3 function in this case, that is the determination of whether
4 the defendant here is guilty or not guilty of the crimes
5 charged, you must remember that guilt is personal; and, so,
6 it must be determined solely on the evidence presented
7 against the defendant or the lack of evidence.

8 You must constantly bear in mind that it is
9 your duty to weigh the evidence calmly and dispassionately,
10 without sympathy or prejudice, for or against the defendant.
11 Any person appearing before this Court is entitled to have
12 a fair and impartial trial, regardless of any **accidental**
13 **factors** such as citizenship, occupation or station
14 in life.

15 Also, the fact that the government is a party
16 here, or that the prosecution occurs in the name of the
17 United States of America, entitles it to no greater con-
18 sideration than that accorded to any other party; and, by
19 the same token, it is entitled to no less consideration.
20 All parties, government and individuals alike, stand equal
21 before the law. I too am bound by that important principle,
22 and you are not to assume that I have any opinion as to
23 whether or not the defendant here is guilty or not guilty
24 or as to the truth or falsity of the charges asserted in
25 the indictment.

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2 The fact that I have asked questions, granted
3 or denied motions during the course of this trial is not to
4 be taken by you as any indication that the defendant is
5 believed by the Court to be either guilty or not guilty.

6 Further, counsel have the perfect right on the
7 offer of certain evidence to press legal objections, and in
8 doing so they are simply performing their duty.

9 In your deliberations to determine the facts
10 and whether the government has established the elements of
11 the crimes charged, which elements I will explain to you
12 shortly, you are to consider solely the testimony which you
13 have heard from the mouths of the witnesses, the exhibits
14 which have been received in evidence, and even any lack of
15 material evidence, but nothing else.

16 I told you earlier that certain evidence was
17 being received subject to connection and I told you earlier
18 that I had found this evidence connected and that, thus,
19 it might be considered by you along with all other evidence
20 in the case. Please remember that this ruling doesn't in any
21 way represent a finding by this Court as to what the facts
22 are. That determination must be made by you, the jury.

23 I have simply ruled that that evidence may be
24 considered by you as you perform your function of deciding
25 what the facts here are.

2 The defendant has pleaded not guilty to the
3 counts with which he is charged. Consequently, the govern-
4 ment has the burden of proving each and every element of the
5 crimes charged against him, and they must prove those
6 elements beyond a reasonable doubt. I will explain what is
7 meant by reasonable doubt shortly.

8 The burden of proving guilt beyond a reasonable
9 doubt never shifts. It remains upon the government through-
10 out the trial. The law never imposes upon a defendant in a
11 criminal case the burden of calling any witnesses or producing
12 any evidence. The defendant does not have to prove that he
13 is not guilty.

14 On the contrary, the defendant is presumed to
15 be not guilty of the accusations contained in the indictment,
16 and this presumption continues throughout the trial and even
17 during the course of your deliberations in the jury room.

18 So the presumption of innocence is sufficient
19 to acquit a defendant of crimes charged, unless it is over-
20 come by evidence that satisfies your minds beyond a reasonable
21 doubt as to the defendant's guilt. Unless you are so satis-
22 fied, it is your sworn obligation to find the defendant not
23 guilty. If you are so satisfied, it is your sworn obligation
24 to find the defendant guilty.

25

So the question arises, what is a reasonable doubt? The words suggest the answer. It is a doubt based on reason, which arises from the evidence or the lack of evidence during the trial. It is not caprice or whim or speculation. It is not an excuse to avoid the performance of an unpleasant duty, nor is it sympathy for any party. Reasonable doubt is doubt which appeals to your reason, your judgment, to your common sense and to your experience. It is the kind of doubt which would cause prudent men and women to hesitate to act in matters of utmost personal importance to themselves.

If, after a fair and impartial consideration of all the evidence you have such a doubt as would cause you as prudent persons to hesitate to act in matters of importance to yourselves, then you have a reasonable doubt and it is your duty to acquit.

If, on the other hand, after a fair and impartial consideration of the evidence you do not have a doubt such as would cause you to hesitate to act in matters of importance to yourselves, then you have no reasonable doubt and it is your duty to convict.

A reasonable doubt does not mean positive certainty, beyond all possible doubt. The reason is that it is practically impossible for a person to be absolutely,

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2 and completely convinced of any controverted fact which by
3 its nature is not susceptible of mathematical certainty.

4 In consequence, the law is that in a criminal
5 case it is enough if proof that a defendant is guilty is
6 established beyond a reasonable doubt, not beyond all
7 possible doubt.

8 You have heard possible reference made to direct
9 evidence and to circumstantial evidence. Let me explain the
10 difference between the two:

11 Direct evidence is where a witness testified
12 to what he saw, heard or observed, what he knows of his own
13 knowledge, something which comes to him by virtue of his
14 senses; that is direct evidence.

15 Circumstantial evidence is evidence of facts
16 and circumstances from which one may infer connected facts
17 which reasonably follow in the common experiences of man-
18 kind. Stated somewhat differently, circumstantial evidence
19 is a fact or a series of facts in evidence which have a
20 logical tendency to lead the mind to a conclusion that
21 another fact exists, even though there is no direct evidence
22 to that effect.

23 Let me take a simple example often used in this
24 courthouse to illustrate what is meant by circumstantial
25 evidence; Assume that when you entered the courthouse this

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2 morning the sun was shining brightly outside and it was a
3 clear day. Further assume that in this courtroom the blinds
4 are drawn so that you cannot look outside. As you are sitting
5 in the jury box, despite the fact that under this assumed
6 set of facts it was dry outside and clear when you entered
7 the courthouse this morning, someone walks in with an um-
8 brella dripping water, followed thereafter by someone with
9 a raincoat which is wet. You can't look outside the win-
10 dows to see whether it is raining or not, and if you were to
11 ask "Is it raining?" you cannot say that you know the
12 answer to that question directly by virtue of your own
13 observation. But upon the combination of facts given, even
14 though when you entered it was not raining outside, it
15 would be reasonable and logical for you to conclude that it
16 was raining now.

17 You arrive at this conclusion from circumstan-
18 tial evidence. In other words, you would infer on the basis
19 of reason and experience from one or more established facts,
20 in this example the dripping umbrella and the wet raincoat,
21 you would infer the existence of some further fact, that is
22 that it is now raining.

23 Circumstantial evidence, if believed, is of no
24 less value than direct evidence, **for** in either instance you
25 must be convinced beyond a reasonable doubt of the guilt of

2 the defendant.

3 The matter of drawing inferences from facts
4 in evidence is not a matter of guess work or speculation.
5 An inference is a logical factual conclusion which you
6 might reasonably draw from other known facts. Much of
7 your work in the jury room, I believe, will be to marshal
8 the evidence before you and to arrive at certain logical
9 factual conclusions by inference.

10 There are times when different inferences
11 may be drawn from the same facts, whether proved by direct
12 or circumstantial evidence. The government asks you to
13 draw one set of inferences. The defendant asks you to
14 draw another entirely different set of inferences. It
15 is for you and you alone to decide, after you have weighed
16 the evidence, what inferences you will draw from the facts
17 as you find those facts to be in this case.

18 There are a few items in this case that are not
19 evidence and which may not be considered by you. Let me
20 just spend a moment on those. If during the course of the
21 trial a question was asked and an objection was interposed
22 and I sustained the objection, you are to disregard the
23 question and any alleged facts contained in the question.

24 If there was an answer to the question, you are
25 to disregard the answer. Similarly, if I ruled that an

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2 answer be stricken from the record, you are to disregard
3 the answer and the question in your deliberations. These
4 items are not evidence and therefore cannot be considered
5 by you in any respect.

6 As I told you earlier, an indictment is not
7 evidence. It is a method or procedure by which persons
8 accused by a grand jury of crimes are brought to trial.
9 Whether the persons accused are guilty or not guilty of
10 the crimes charged is determined by a trial jury, such
11 as you are.

12 There has been evidence adduced at this trial
13 that some of the witnesses may have made statements at some
14 prior time, for instance before the grand jury or at the
15 prior trial of some other persons, and that these statements
16 may appear to be inconsistent with the witness' testimony
17 in this trial. Those earlier statements have been admitted
18 only to impeach, that is to call into question the credi-
19 bility of the witness. That is why the law permits them
20 to be received into evidence. They are received for that
21 purpose.

22 They have not been admitted to establish the
23 truth of what is asserted in those earlier statements.
24 Such prior statements have been presented here by counsel
25 in an effort to indicate that what the witness has said on

2 trial here may not be reliable because of faulty memory
3 or for any other reason or motive which you may determine
4 from such evidence. It is for you to decide whether or not
5 these statements are contradictory and, if so, what effect
6 such inconsistencies has on the credibility of the witness.

7 As I told you before, you as jurors are the
8 sole judges of the credibility of witnesses and also of the
9 weight their testimony deserves. You know that there is
10 no automatic way to decide who is telling the truth and
11 who is not. Credibility can be equated with believability.

12 If a witness is credible, you say that he is
13 believable. You should carefully scrutinize all of the
14 testimony offered, both on direct examination and cross
15 examination, redirect examination, recross, and so forth,
16 with due regard to the circumstances under which each
17 witness has testified.

18 You must consider every matter in evidence
19 which tends to show whether or not the particular witness
20 is worthy of belief. Consider the witness' ability to
21 observe the matters as to which he has testified and whether
22 or not the witness impresses you as having had an accurate
23 recollection of these matters.

24 When judging credibility it is important that
25 you consider any relation any witness may bear to any side

1 hv

2 of the case; also the manner in which each witness might
3 be affected by the verdict; and also any other motive which
4 the witness might have for testifying as he or she has.
5 You should weigh all the evidence and determine the extent
6 to which, if at all, each witness is either supported or
7 contradicted by other evidence in the case.

8 In this case one of the government witnesses
9 has been granted immunity with respect to his testimony
10 here. We call it use immunity. I am referring to Mr.
11 Jaffee. What this means is that although Mr. Jaffee during
12 his testimony here testified to having committed acts
13 for which he might be prosecuted, the government may not
14 use his testimony here against him in any subsequent
15 criminal proceedings. If the government is to develop
16 evidence to prosecute him for any crimes, it will have to
17 develop its case independent of the witness' testimony here
18 or any evidence that might be derived from it.

19 Further, Jack Glasser has been granted what
20 we call transactional immunity. What this means is that
21 the government cannot prosecute him at all for the acts he
22 has admitted from the witness stand at this trial.

23 The impact of a grant of immunity must be
24 weighed carefully by you and you should scrutinize the
25 testimony of these witnesses with special care. You should

1
2 seek to determine from all the relevant evidence with
3 respect to this matter whether or not their desire for
4 immunity or the grant of immunity might have contributed
5 to a motive to testify falsely.

6 On the other hand, you should also consider
7 the fact that a witness testifying under immunity faces
8 the same risk of a perjury prosecution should he give
9 false testimony, just as any other witness at this trial,
10 and that the purpose of a grant of immunity is to encourage
11 otherwise reluctant witnesses to testify truthfully.

12 It is for you and you alone to assess the motives
13 of the witnesses in this case. You have heard the defendant's
14 wife testify in this case. You know, of course, that by
15 virtue of her relationship to the defendant she has some
16 interest in the outcome of this case. In considering her
17 testimony, you may properly take that interest into account.

18 Further, you may take into consideration the
19 fact that she has been present in the courtroom during the
20 time the witnesses for the government testified. The ulti-
21 mate question for you to decide in passing on the credibility
22 of any witness in this trial is **did** the witness tell the
23 truth to you. It is for you and you alone to say whether a
24 witnesses' testimony at this trial was truthful or untruthful,
25 in whole or in part.

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If you find that any witness has wilfully testified falsely as to any material matter, you may reject the entire testimony of that witness or you may accept such portions of it as you believe to be true.

As you are aware, the defendant did not take the stand. As to this I charge you that the law does not require a defendant in a criminal case to take the witness stand and testify, and no presumption of guilt may be raised and no inference of any kind may be drawn from the fact that the defendant did not testify.

I instruct you further that there is no presumption against the government from its failure to call a witness when it appears that his or her testimony would be merely cumulative and repetitious and have no greater value than that of witnesses who have already testified. Of course, you remember that there is no obligation on the defendant to call any witnesses at all.

I should note that there has been some testimony in this trial related to the defendant's reputation in the community for honesty, truthfulness and integrity. You should consider such evidence, together with all the other evidence, in determining the defendant's guilt or innocence. Evidence of good reputation, if accepted, may in itself create a reasonable doubt, where without such evidence

no reasonable doubt would exist. But if from all the evidence you are satisfied beyond a reasonable doubt that a defendant is guilty, a showing that he previously enjoyed a reputation of good character does not justify or excuse the offense and you should not acquit him merely because you believe he has been a person of good reputation.

Lastly, there has been testimony by Mr. Chambers that the defendant admitted the acts for which he is being tried. If you find that the defendant did in fact make such an admission, you are entitled to give this evidence great weight. This completes my general instructions with regard to your function and duty is and with regard to what you may or may not consider in your deliberations.

Now, I am going to turn to a discussion of the specific charges against the defendant and instruct you as to what essential elements the government must prove beyond a reasonable doubt in order to sustain the charges against the defendant. The charges in this indictment are set forth in three separate counts. Each of the counts charges a separate crime and they must each be considered separately. The fact that you may find the accused guilty or not guilty of one of the offenses charged should not control your verdict with respect

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2 to any other offenses charged.

3 Each of counts one through three charges a
4 violation of the Federal Labor Management Relations Law,
5 also known as the Taft-Hartley Law, and is based on
6 alleged specific payments of money by Karl Jack Schwartzbaum
7 through Jack Glasser to one Charles Hoff.

8 Each count of the indictment charges the
9 defendant with violating Sections 186A of Title 29 of
10 the United States Code which is part of the Taft-Hartley
11 Act and the pertinent provisions of the statute read as
12 follows:

13 "(A) It shall be unlawful for any employer
14 or association of employers or any person who acts in the
15 interest of an employer to pay, lend or deliver or agree
16 to pay, lend or deliver any money or other thing of value,
17 1, to any representative of any of his employees, or, 2,
18 to any labor organization or any officer or employee
19 thereof which represents, seeks to represent, or would admit
20 to membership any of the employees of such employer who are
21 employed in an industry affecting commerce."

22 I shall now read counts one through three of
23 the indictment:

24 "The grand jury charges that on or about the
25 dates hereinafter set forth, in the Southern District of

New York, Karl Jack Schwartzbaum, the defendant, being an employer in an industry affecting interstate and foreign commerce, to wit, the fur industry, did unlawfully, wilfully and knowingly pay and deliver, and agree to pay and deliver, a thing of value, to wit, money in the amounts herein after set forth, to Charles Hoff, an officer of the Furriers Joint Council, a labor organization which represented the employees of the said defendant.

"Count one. In or about the first third of 1969, \$150. Count two, in or about the second third of 1969, \$150. Count three, in or about the last third of 1969, \$150."

Before you may find the defendant guilty of any of these counts you must find that the government has proved beyond a reasonable doubt each and every one of the following elements;

(One) That on or about the date alleged, Karl Jack Schwartzbaum made a payment of money, indirectly through Jack Glasser, which was received and accepted by Charles Hoff.

Two, that on or about the date alleged Karl Jack Schwartzbaum was a manufacturer employing union labor, that is individuals who were members of the Furriers Joint Council of New York.

Three, that on or about the date alleged Charles

2 Hoff was an officer or employee of the Furriers Joint
3 Council of New York.

4 Four, that the fur products manufacturing
5 industry is an industry affecting commerce. And, five,
6 that Karl Jack Schwartzbaum acted wilfully and knowingly.

7 With respect to each count of the indictment
8 I instruct you that if you find beyond a reasonable doubt
9 that the payment specified in that count was made and
10 delivered by the defendant to Jack Glasser and received
11 and accepted by Charles Hoff as alleged, then you may
12 find that the first element of the crime has been proven.

13 However, you should bear in mind that the
14 government's burden is to prove as to each of the three
15 counts of the indictment that the defendant did in fact
16 make the payment to Glasser and that Glasser did in fact
17 turn over a portion of the payment to Charles Hoff.

18 If you find only that the defendant paid
19 Glasser but that Glasser never delivered that payment to
20 Hoff, then the government has not met its burden with
21 respect to this element. Moreover, if you find that
22 Glasser gave money to Mr. Hoff but that the government has
23 failed to establish that the money came from the defendant,
24 then the government has not met its burden with respect to
25 that count. But if you find beyond a reasonable doubt that

the payments specified in each of the counts in question were made and delivered and received and accepted as the government's witnesses have testified here, then you may find that this element has been established.

As to the second element, in order to find that a crime has been committed on each of the counts, that is one through three, you must also find that Karl Jack Schwartzbaum was a fur industry manufacturer employing union labor. It appears that this fact is undisputed, and, so I instruct you that Karl Jack Schwartzbaum was an employer within the meaning of the statute and that this element of the offense is satisfied.

The government must also prove, and this is the third element, that Charles Hoff was a representative of at least some of the defendant's employees. It appears that it is undisputed that Charles Hoff was an officer or employee of the Furriers Joint Council of New York and that some employees of the defendant's firm were members of that union.

The fourth element, with regard to the requirement that the government prove that the fur products manufacturing industry is an industry affecting commerce, this fact is undisputed.

You will note that the acts charged in the

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2 indictment are alleged to have been done unlawfully.

3 Unlawfully means contrary to law. Hence,
4 to do an act unlawfully means to wilfully do something which
5 is contrary to law. On the other hand, the statute involved
6 here does not require a conscious wrongdoing. Rather, it
7 is a legal prohibition which outlaws all payments between
8 employers and union representatives, with stated exceptions
9 which are not relevant here.

10 Thus, the final element the government is
11 required to prove in connection with counts one through
12 three, is that the defendant acted wilfully and knowingly.
13 In this context, conduct that is done wilfully and knowingly
14 is conduct that is done deliberately and voluntarily. It
15 is not conduct resulting from inadvertence, mistake or
16 accident. The government need not prove, however, that
17 the defendant knew about the Taft-Hartley Act and need not
18 prove that the defendant acted with specific purpose to
19 violate that statute.

20 In the context of this case, you may find that
21 Karl Jack Schwartzbaum acted knowingly and wilfully if you
22 find beyond a reasonable doubt that he made payments of
23 money to Jack Glasser, intending that at least a portion
24 of those monies be conveyed by Jack Glasser to one or more
25 union officers or employees.

Put another way, you may find this element of the offense satisfied if you find beyond a reasonable doubt that the defendant made payments of money to Jack Glasser expecting or contemplating that Jack Glasser would transmit at least a portion of those monies to one or more union officials or employees.

To convict, however, you need not find that the defendant knew or learned of the identity of the union official whom the government contends Jack Glasser paid for the precise amount allegedly transmitted to him. Just to make sure you understand what is at issue here, let me recapitulate.

In order to find the defendant guilty of any of the three counts with which he is charged, you must first find beyond a reasonable doubt that the defendant made the payment alleged in that count to Jack Glasser and, further, that Glasser turned over part of that payment to Charles Hoff as alleged in the indictment. This is required by the first element of the offense as I have discussed it.

You must also find beyond a reasonable doubt that the payment made in that particular count was made knowingly and wilfully by the defendant. Under this element you need not find that the defendant knew the actual

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2 identity of the union official or employee who received
3 the payment. It suffices if you find beyond a reasonable
4 doubt that the payment was made by the defendant to Jack
5 Glasser intending or contemplating that Glasser would turn
6 over part of the monies to a union official or employee.

7 You will recall that during the trial the
8 government produced testimony both through Jack Glasser
9 and Harry Jaffee of payments of money to Jaffee from
10 defendant Schwartzbaum through Jack Glasser. I also
11 permitted the government to elicit evidence concerning
12 payments allegedly made by Mr. Schwartzbaum prior to
13 1969. You are reminded that the charges made against the
14 defendant here involved alleged payments to Charles Hoff
15 during the year 1969. The defendant is on trial only
16 for the acts alleged in the indictment.

17 Therefore, while you may consider the testimony
18 concerning payments other than those alleged in the indict-
19 ment, you may only consider that as possibly evidencing, and
20 this is for your determination, a general pattern or
21 course of conduct on the part of the defendant which may
22 served to prove the necessary intent or knowledge with
23 respect to the offenses charged, but that is your determi-
24 nation to make.

25 These then are the elements of the crimes

1 charged in counts one through three of the indictment.

2 Again I remind you that before you can find the defendant
3 guilty of any charge you must find each and every element
4 for that particular count proved beyond a reasonable doubt.
5

6 If you find that the evidence with respect to
7 any one of the elements needed to prove the offenses charged
8 leaves a reasonable doubt, then it is your duty to find
9 the defendant not guilty of the crime charged in that
10 count.

11 You are not to consider or speculate about the
12 punishment which the defendant may receive if found guilty.
13 It is the function of the jury to deliberate and determine
14 whether the defendant is guilty or not guilty on the basis
15 of the evidence and the instructions of the Court.

16 It is the function of the Judge to determine
17 the disposition of the defendant's case thereafter. The
18 most important part of the case is the part which you now
19 as jurors are about to play because it is you and you alone
20 who will have to decide whether the defendant is guilty or
21 not guilty. I know that you will try the issues which have
22 been presented here in accordance with the oath you took
23 as jurors, and in that oath you will remember that you
24 promised that you would well and truly try the issues
25 joined in this case and a true verdict render.

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2 If you follow that oath and try the issues
3 without confusing your thinking with emotions, you will
4 arrive at a just verdict.

5 As you deliberate I ask you to please be
6 careful to listen to the opinions of other jurors as well
7 as to ask for the opportunity to express your own views.
8 No one juror holds the center of the stage in the jury
9 room, no one juror controls or monopolizes deliberations.
10 You must all express your views and exchange views. If
11 you become convinced that your original view was wrong with
12 respect to any matter, don't be afraid to change your vote
13 because of pride in your original opinion or in reaction
14 to the stubbornness of some other person.

15 On the other hand, do not surrender your
16 honest belief solely because of the opinion of your
17 fellow jurors or because you are outnumbered.

18 You understand that in a criminal case in
19 this court your verdict must be unanimous. That means
20 that it must be joined in by each and every one of you.
21 The form of the verdict should be either guilty or not
22 guilty on each count of the indictment that is before
23 you.

24 During your deliberations you may send for
25 any exhibits in evidence that you may desire to review.

1
2 You may request that any testimony be read back to you. If
3 you wish testimony read back to you, it is most helpful to
4 us if you can be somewhat specific as to what it is you
5 wish. You may request that any portion of this charge
6 be read to you again. For that matter, again and again
7 and again.

8 You may request that a copy of the indictment
9 be sent to you in the jury room. If you do make that
10 request, please remember, as I have told you, that an
11 indictment is not evidence. All of your requests must
12 be in writing.

13 Finally, you are instructed that you must not
14 reveal the standing of the jurors at any time during your
15 deliberations, that is you are not to indicate the count
16 of your split vote on the verdict to any one, including
17 the Court.

18 If you will just remain seated, I will ask
19 counsel to step into the robing room.

20 (In the robing room.)

21 THE COURT: I will take exceptions at this
22 point. Mr. Esbitt?

23 MR. ESBITT: First, for the record, I will
24 renew the objections I had made previously with respect
25 to the denial of my requests and the denial of my

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2 objections, my objections to the government's requests.

3 THE COURT: Same ruling.

4 MR. ESBITT: I do want to call your Honor's
5 attention to one comment that your Honor made with respect
6 to Chambers. I believe you instructed the jury that
7 Chambers testified that the defendant admitted the acts
8 for which he is being tried, and I do not believe that the
9 record would show that. I am quite certain, your Honor,
10 that what the witness Chambers testified to was the
11 statement which appeared in his confidential memorandum,
12 to wit, as appears here, "According to Schwartzbaum the
13 payment he made totaling \$600." That, your Honor is sub-
14 stantially different and creates a completely different
15 impression to the jury.

16 He did not, I believe, testify, and my note is
17 that you had instructed the jury the witness Chambers tes-
18 tified that the defendant admitted the acts for which he is
19 being charged. I don't believe that is a fact. I think
20 there is a substantial difference between that and his
21 testimony which was that Schwartzbaum admitted the payment
22 he made totaled \$600.

23 MR. FRYMAN: I believe Mr. Esbitt is incorrect
24 about the testimony. I believe on cross examination Mr.
25 Chambers stated that Mr. Schwartzbaum admitted that he

1
2 paid \$600 to union officials, which is essentially the
3 charge in the indictment.

4 THE COURT: Do we have the transcript? I am
5 willing to make a clarification of that if it is possible
6 to get some agreement as to what that clarification should
7 be. Let's hold that a moment and move on to any other objec-
8 tions.

9 MR. ESBITT: Other than the objections I made
10 before, for the record, I don't see any point in repeating
11 them, except that I had indicated before and I want to
12 repeat it again, although I don't think it is going to
13 persuade your Honor at this point, that is defendant's
14 position is that as part of the climate of this case, they
15 must -- the government must prove to the satisfaction of the
16 jury beyond a reasonable doubt that he knew -- that the
17 defendant knew that the money was going to Charles Hoff
18 and --

19 THE COURT: Same ruling on that.

20 MR. ESBITT: That's all.

21 MR. FRYMAN: The government has no exceptions.
22 We do have one inquiry. I believe yesterday you indicated
23 that you were going to include in your charge something with
24 respect to the last printed request number 9 of the govern-
25 ment, the part dealing with deliberately closing his eyes.

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2 THE COURT: I have struggled with that through
3 the night and this morning and have deliberately left it
4 out. I am very much troubled. I found myself very much
5 troubled by it because I didn't recall that there was
6 evidence that the defendant affirmatively, if you will,
7 sought not to know who was to receive the money, which to
8 me would be the import of saying that he deliberately and
9 intentionally closed his eyes to who the money was going to.

10 I was very much concerned that that would be
11 an incorrect charge based on the evidence that I recall.
12 So I struck that and instead sought to handle it in
13 another fashion. You are quite right though, I didn't
14 include that.

15 Why don't you and Mr. Fryman get together on
16 this Chambers matter and see if you can fashion with res-
17 spect to that particular portion of the charge somethings
18 that you think would be a suitable clarification as to
19 Mr. Chambers' testimony.

20 MR. ESBITT: Do your notes, your Honor, reflect
21 what the witness testified to? It is difficult for me to
22 take it down word for word. Do you have your notes --

23 THE COURT: I'd rather not resort to my notes
24 on this issue. Your concern, and it is perhaps a legiti-
25 mate concern, is that as I have stated it it tends to be

awfully conclusory, and I would be willing to be less conclusory and more factual in terms of what the testimony was in that respect, so I will ask you both to see what you can do in that regard.

MR. ESBITT: Can we discuss it off the record?

THE COURT: Yes. I am going to ask you to step outside and work on it and I am going to ask the jury to take a brief recess.

(In open court.)

THE COURT: Why don't you take a brief recess. Don't talk about the case yet. It will be yours shortly to talk about. Take a brief recess for now.

(Recess taken.)

(In the robing room.)

THE COURT: I propose to say to the jury, there has been some testimony by Mr. Chambers that the defendant made certain statements to him concerning payments amounting to \$600. If you find that the defendant did in fact make such an admission, you are entitled to give this evidence great weight. I will change "admission" to statement.

Mr. Fryman?

MR. FRYMAN: The government has no comment on that, Judge.

MR. ESBITT: I object to the business about --

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2 I object to that part of your proposed charge that the jury
3 is entitled to give it "great weight." It is not entitled
4 to give it any more weight than the testimony of any other
5 witness.

6 THE COURT: Then I will change it back to,
7 "If you find the defendant did make such statements, the
8 law is that you are entitled to give great weight to
9 admissions by a defendant."

10 Any comment from the government?

11 MR. FRYMAN: No, your Honor.

12 MR. ESBITT: I renew my objection to "great
13 weight" and I would ask your Honor to add to that the
14 fact or a reminder that the credibility of this witness
15 is to be tested in the same manner as the credibility of
16 any other witness as I have previously instructed.

17 THE COURT: I decline to do that again, I
18 have already done that, but I will seek to clarify this
19 statement about Mr. Chambers in the manner that I have
20 indicated because I think your concern about is legitimate.
21 You do have your exception, even as to this which I propose
22 to give them.

23 MR. ESBITT: I am just considering whether I
24 want to withdraw the objection in view of the fact that
25 your Honor is adding to it that the jury is entitled to

give it great weight.

THE COURT: I have already told them that once. What I told them originally, in other words, was that if you find the defendant did in fact make such admissions, you are entitled to give this evidence great weight. I am proposing now to change that to read, "If you find that the defendant did in fact make such statements, the law is that you are entitled to give great weight to admissions by a defendant."

MR. ESBITT: In view of your Honor's proposed change, I will withdraw my request, your Honor. I think this would be more damaging to my client than to have the original statement.

THE COURT: All right, Counselor, as you wish.
(In open court.)

THE COURT: Swear the marshals.

(Two Marshals were duly sworn.)

THE COURT: Ladies and gentlemen, it is now your responsibility to take the case, talk about it, form and express opinions, exchange views, all those things I have been telling you you couldn't do all this while. Please go into the jury room and begin doing it. The case is yours. Madam Forelady, lead them out.

(Jury commenced deliberations at 10:50 a.m.)

(In open court - jury not present, 12:15 p.m.)

(Court Exhibits 2 and 3 were marked.)

THE COURT: We have received a note from the jury which is made Court's Exhibit 2. It reads:

"May we please have a copy of the indictment with the three charges."

Parenthetically, that was followed by another note which will be marked Court's Exhibit 3:

"May we please have a copy of the charges against Mr. Schwartzbaum." We understand that they are referring to the requests for the indictment and the indictment has been furnished to them with the consent of counsel for both sides.

Court's Exhibit 3 came in at 11:30. Court's Exhibit 2, paragraph 2, reads:

"May we hear Mr. Chambers testimony admitting that Mr. Schwartzbaum gave money."

I gather that there has been disagreement between counsel as to what should be read. Are counsel able to direct me to, from your respective positions, to certain page references?

MR. FRYMAN: Yes. I believe, your Honor, as to the part that has been transcribed, which was Mr. Chambers' direct testimony and the first part of the cross in the

2 afternoon, the government requests that the testimony read
3 to the jury given at page 309, line 24 and continue to page
4 311, line 12.

5 MR. ESBITT: My objection is that I think that
6 that testimony, that portion of the testimony should be
7 limited to page 311, lines 9 to 15.

8 MR. FRYMAN: I believe you must mean, beginning
9 with line 8.

10 THE COURT: 8 or 9. Anything else?

11 MR. FRYMAN: The reason we request the material
12 read in advance of that is to give some background to the
13 conversation with Mr. Schwartzbaum and our request is that
14 the testimony end at line 12 and not through lines 13, 14
15 and 15, as Mr. Esbitt requested.

16 THE COURT: Now I have got your request in this
17 regard. I have your request in this regard. Correct?

18 MR. ESBITT: Yes.

19 THE COURT: Let me just take a look at it.

20 (Pause.)

21 THE COURT: I rule that we will read to the
22 jury, pursuant to their requests, from page 309, line 24,
23 to page 311, line 12. With reference to lines 13, 14 and
24 15, I will ask Mr. Esbitt to speak to the question of why
25 should that be allowed?

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2 MR. ESBITT: The significance of that, your
3 Honor, is that this witness didn't take notes as to the
4 facts but only the amounts involved. That is significant
5 and should be included in the information furnished to the
6 jury. It is significant. He only took notes relative to
7 amounts only. That's the significant part. Not to what he
8 had said.

9 MR. FRYMAN: Your Honor, the jury hasn't asked
10 about what notes Mr. Chambers took or what memoranda he
11 dictated. If the testimony is read to them about the notes,
12 it would certainly seem also pertinent that in the same
13 memorandum, in the same day in the afternoon he dictated
14 a memorandum concerning the events in the morning, and it
15 seems to me once you start down that line, the whole tes-
16 timony would have to be reread.

17 THE COURT: I see what you mean. My first
18 inclination was to wonder what harm it could do to read
19 13, 14 and 15. Then I see Mr. Fryman's point, it would
20 lead us immediately into 16, 17, 18 and 19.

21 MR. ESBITT: I am not asking for that, Judge.

22 THE COURT: Yes, but here is the point. If I
23 approve lines 13, 14 and 15 which you are asking for, Mr.
24 Fryman is indicating he is going to ask for 16, 17, 18 and
25 19.

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2 MR. ESBITT: Are you going to ask for that?

3 MR. FRYMAN: I will.

4 THE COURT: If he asks for that, I am sure you
5 are going to ask for 20, 21, 22, which gets into the
6 revisions.

7 MR. ESBITT: I understand, Judge, and that's
8 why I have limited it to those three lines only. I think
9 in fairness to the defendant that ought to be indicated
10 because it directly relates to the \$600.

11 THE COURT: Let me put it in these terms. I
12 will give it, but if he, Mr. Fryman, asks for me to go
13 further, I am going to give that too because it is the
14 next logical thing to add to that business about notes,
15 the fact that he made a memorandum is equally significant.

16 The question is, do you want it on those terms?
17 You may have it on those terms or you may decline it and
18 note your exception.

19 MR. ESBITT: Let me see how far you want to go,
20 if the Judge grants me my request.

21 MR. FRYMAN: Through line 19. Just to make
22 clear the government's position, Judge, we oppose the request
23 for the reading of the testimony regarding the notes, but
24 our request with regard to the memorandum would be only if
25 your Honor grants Mr. Esbitt's request with regard to the

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2 notes.

3 MR. ESBITT: I will make the request.

4 THE COURT: Then I will have the reading on
5 page 311 go from the top of the page to and through line --

6 MR. ESBITT: I understand the government's
7 request is only through line 19.

8 MR. FRYMAN: Line 19.

9 THE COURT: Through line 19.

10 MR. ESBITT: Of course, I will take exception
11 to your granting the additional request.

12 THE COURT: All right. What else is there?

13 MR. FRYMAN: The government then requests,
14 your Honor, on page 314, beginning with line 8, and we
15 believe the question can be read beinging "As specifically
16 as you can recall" in that line down through line 24 with
17 the objection and the Court's ruling omitted in that part.

18 MR. ESBITT: Now my position is just the reverse.
19 I want to limit it. I think that the only portion that
20 should be read to the jury is the question on line 22,
21 "And he said the amount that he had paid was \$600?"
22 Answer: "That's correct, sir."

23 I think this part about he couldn't understand
24 the reasoning shouldn't go in. That has nothing to do with
25 the \$600.

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2 THE COURT: I will allow page 314, lines 8
3 through 24 where it ends "That's correct, sir," omitting
4 the reference to the objection.

5 MR. ESBITT: May I just be heard for a moment
6 on that? I do want to bring to your attention that there
7 is material in here that does not relate to it. For exam-
8 ple, in his first answer he said that he couldn't understand
9 the reasonsing for the indictment because of the small
10 amounts. That has nothing to do with the request.

11 Number two, in line 19, he felt they were using
12 Mr. Schwartzbaum and -- it has nothing to do with the \$600
13 payment.

14 THE COURT: Let me ponder that one moment. My
15 reasoning, very frankly, is that since they asked for tes-
16 timony regarding money, where I find references to amounts
17 my inclination is to assume that amounts and money go hand
18 in hand, but let me read it again.

19 (Pause.)

20 Assuming that I am going to allow what I
21 indicated to be read to them, is it your request that there
22 be omitted lines 18 through 21? By that I mean "And what
23 else did he say, if anything?" "He felt they were using
24 Mr. Schwartzbaum to get at the larger payers"--

25 MR. ESBITT: Yes. I think the whole

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2 explanation which had nothing to do with the \$600 --

3 THE COURT: You heard my question. I am only
4 asking you to comment on that, 18 through 21. You want
5 that omitted?

6 MR. ESBITT: Yes, sir.

7 THE COURT: I think I will omit that.

8 MR. ESBITT: In addition, I renew my request
9 to have deleted the prior part, particularly the part where
10 he said he couldn't understand the reasoning of the indict-
11 ment because of the small amounts involved.

12 THE COURT: If 22 and 23 are to make any sense,
13 that question should be left in.

14 MR. FRYMAN: Unfortunately, the rest of the
15 testimony has not been transcribed and we will have to go
16 over it with the reporter's notes. We have gone over it
17 with him and he can read for you the certain specific
18 areas that we haven't agreed on.

19 THE COURT: All right.

20 (Discussion off the record.)

21 MR. ESBITT: May I state for the record that I
22 take exception to such parts of the testimony which your
23 Honor has indicated you would read to the jury and to which
24 I have objected, and in view of your Honor's ruling, I take
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2 exception. But I make this observation to the Court. I
3 request that your Honor so advise the jury that this tes-
4 timony is not sequential and that there were many, many
5 interruptions between one part of the testimony and another
6 because I am concerned about the impact upon the jury of
7 the repeated statements as though the witness had testified
8 to it over and over and over again in that order.

9 THE COURT: All right. I will undertake to so
10 inform them. Bring the jury in.

11 MR. ESBITT: May I make a suggestion that your
12 Honor ask the jury whether there is any other portion of
13 Mr. Chambers' testimony --

14 THE COURT: Yes, I will.

15 (Jury present.)

16 THE COURT: We are sorry to interrupt your
17 lunch, we understand it just arrived, but we kept you
18 waiting so long that I just felt it was necessary to bring
19 you out here and try and get you this information that you
20 have asked for as soon as possible. We have been searching
21 through the record to locate it, and you will find that
22 even though it will be read to you straight through, you
23 must remember that the testimony was interrupted with a
24 whole lot of additional questions and answers. We have
25 just ferreted out from the record that which we could find

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2 which bore on your question.

3 Your question was, "May we hear Mr. Chambers'
4 testimony admitting that Mr. Schwartzbaum gave money."

5 We tried to leave everything else out. If
6 you want anything else concerning his testimony, please
7 remember that you have but to ask for it and we will get
8 that for you. All right.

9 (Whereupon, the record was read.)

10 THE COURT: I remind you again that that was
11 taken out of context in order to give you the answers that
12 you asked for. There were many statements taken in between
13 those statements. If you require anything further, send
14 us a note and we will get it to you.

15 All right.

16 (Jury resumed deliberations at 12:55 p.m.)

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(In open court - jury not present.) (3:00 p.m.)

(Court's Exhibits 4 and 5 were marked.)

THE COURT: There are three parts to this note, Exhibit 4 of the Court, that we have been trying to get to. I understand there is agreement as to how to respond to it.

MR. ESBITT: To the first one, yes, sir.

THE COURT: I think we should go ahead with part 1 in which they ask for the testimony of Mr. Glasser in a certain respect and I think I should answer part 2 in which they ask why wasn't Mr. Hoff asked to testify, I think I should explain to them that it is -- his presence or non-presence, what he would have said or not said, is not evidence and they may not have an answer to that question, perhaps with a little further reference to what evidence is as I have defined it to them up to this point, as being that which is already in the record, the exhibits, and even any lack of evidence. With reference to part 3 where they say the indictment reads "To Charles Hoff."

Could the wording "to a union official suffice," I propose to read back to them certain portions of the charge pertaining to elements 1 and 5. Now to have a new note which will be marked as Court's Exhibit 5 and it reads "The jury would like to have you charge us again. Could that

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2 be possible?"

3 If we are going to charge them again, then, of
4 course, we would cover the portion asked for.

5 MR. ESBITT: With respect to the first part of the
6 note, Mr. Fryman and I are in agreement that that portion
7 of the record as follows should be read to the jury. Page
8 67 of the record starting at line 16 through page 68, line
9 15.

10 THE COURT: There is no objection with reference
11 to the question, my intended answer as to why Mr. Hoff was
12 not asked to testify?

13 MR. ESBITT: No, that sounds like an acceptable --

14 THE COURT: I cannot offer them an explanation.

15 MR. ESBITT: That is satisfactory to the defend-
16 ant.

17 MR. FRYMAN: Satisfactory to the government.

18 THE COURT: I guess we will just have to read the
19 charge back to them. It may be as I move along in the
20 charge that there are certain portions which they might not
21 want back.

22 MR. ESBITT: I don't know how you can ask them
23 that.

24 THE COURT: I can ask them, for example, they may
25 not want the rain example all over again, you see. I may

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2 turn to them, if you have no objection, and ask for a
3 nod of the head. If they nod yes, I will give it. If they
4 nod no, I won't go through all of that. Is that satis-
5 factory?

6 MR. FRYMAN: Yes, your Honor. One thing, your
7 Honor, with regard to the first question, both Mr. Esbitt
8 and I interpret that question as referring to the meeting
9 in 1943. There is some ambiguity in the question and we
10 think it would be satisfactory if the testimony relating to
11 '68 is read which we have agreed upon and then you can make
12 the general statement after that that if there is any other
13 testimony they want read, it can be read to them. Not
14 specifically referring to another year but just a general
15 statement about reading further testimony.

16 MR. ESBITT: I accept that, your Honor.

17 THE COURT: All right.

18 (Jury present.)

19 THE COURT: We have your two notes. Let us take
20 the first one first. That calls for the reading of cer-
21 tain testimony of Mr. Glasser.

22 (Record read.)

23 THE COURT: There is more in the record that you
24 are interested in. As you know, Mr. Glasser testified
25 for a number of hours. Should you wish any more with

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2 reference to any of his testimony or anybody else's testi-
3 mony, send in a note and we will make it available to you.

4 The second part of that note, first note, inquires
5 as to why Mr. Hoff was not asked to testify either for the
6 government or the defense.

7 I am afraid you may not have an answer to that
8 question because as the jury you are limited to considering
9 only evidence as I have defined evidence to you, meaning
10 by that testimony from the mouths of the witnesses who
11 testified here and the exhibits actually received in
12 evidence.

13 You may consider the lack of evidence. But I
14 cannot answer your question since it is not a part of the
15 evidence in this case. The third part makes a specific --
16 addresses itself specifically to the indictment, it says,
17 "The indictment reads 'To Charles Hoff.' Could the wording
18 'to a union official' suffice?"

19 Rather than give you that in a truncated fashion,
20 I now turn to your next note in which you ask whether or
21 not it is possible to hear the entire charge again. The
22 answer is yes, you can hear it again, and so therefore the
23 answer to the last portion of your first note will be
24 contained in the charge if you listen for it. --

25 It will be among the elements and specifically it

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2 will be related to element 1 and element 5 which I speak to
3 specifically and then which I -then recapitulate.

4 So we will read through the charge again. First
5 some general principles as to your duty as to what you
6 may and may not consider during your deliberations. It is
7 the judge's function to instruct you as to the law which
8 applies in the case. It is the jury's duty to accept the
9 law as it is stated to you and to apply the law to the
10 facts as you the jury find those facts to be during your
11 deliberations.

12 You are asked not to single out any one instruction
13 alone as stating the law but to consider the instructions
14 as a whole. The logical result of your application of the
15 law to the facts as you find those facts to be should be a
16 verdict of guilty or not guilty as to each of the counts
17 in the indictment.

18 You are the sole and exclusive judges of the facts
19 in the case. You pass upon the weight of the evidence.
20 You determine the credibility of the witnesses. You resolve
21 any conflicts which may exist in the evidence; you draw
22 such reasonable inferences as may be warranted by the testi-
23 mony and exhibits in the case. With respect to any matter
24 of fact it is your recollection and yours alone which
25 controls.

Nothing shall the Judge or the lawyers in this

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2 case may have stated with respect to any factual matters
3 is not to be substituted for your own independent recol-
4 lection of what the facts and the evidence are. That is your
5 own independent recollection of the evidence from which
6 you will draw the facts. As you approach the performance
7 of your function in this case, that is the determination of
8 whether the defendant is guilty or not guilty of the crimes
9 charged, you must remember that guilt is personal and so
10 must be determined solely on the evidence presented against
11 the defendant or the lack of evidence.

12 You must constantly bear in mind that it is
13 your duty to weigh the evidence calmly and dispassionately
14 and without sympathy or prejudice for or against the
15 defendant. Any person appearing before this Court is
16 entitled to have a fair and impartial trial regardless of
17 any accidental factor such as citizenship, occupation or
18 position in life. Also the fact that the government is a
19 party here or that the prosecution occurs in the name of
20 the United States of America entitles it to no greater
21 consideration than is according to any other party, and,
22 notwithstanding, it is entitled to no less consideration.

23 All parties, government and individual alike,
24 stand equal before the law. I too am bound by that prin-
25 ciple and you are not to assume that I have any opinion as

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2 to whether the defendant is guilty or not guilty or as to
3 the truth or the falsity of the charges asserted in the
4 indictment. The fact that I have asked questions, denied
5 motions, granted motions or -- in the course of this trial
6 is not to be taken by you as any indication that the def-
7 endant is believed by the Court to be either guilty or not
8 guilty.

9 Further, counsel have the right on the offer
10 of certain evidence to press legal objections and in doing
11 so they are simply performing their duty.

12 In your deliberations to determine the facts and
13 whether the government has established the elements of the
14 crimes charged, you are to consider solely the testimony
15 which you have heard from the witnesses, the exhibits which
16 have been received in evidence, even any lack of material
17 evidence, but nothing else. I told you earlier in this
18 trial that certain evidence was being received subject to
19 connection and I told you that I had found the evidence
20 connected, and thus that it might be considered by you along
21 with all other evidence in the case.

22 Please remember that this ruling does not in any
23 way represent a finding by the Court as to what the facts
24 are. That determination is one to be made by you, the jury.
25 I have simply ruled that the evidence may be considered

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2 by you as you perform your function of deciding what the
3 facts are here.

4 The defendant on trial here has pleaded not guilty
5 to the counts with which he is charged. Consequently, the
6 government has the burden of proving each and every element
7 of the crimes charged against him beyond a reasonable doubt.
8 I will explain reasonable doubt in a moment.

9 The burden of proving guilt beyond a reasonable.
10 doubt never shifts. It remains upon the government through-
11 out the trial and the law never imposes upon a defendant in
12 a criminal case the burden of calling any witnesses or
13 producing any evidence. The defendant does not have to
14 prove that he is not guilty. On the contrary, the defendant
15 is presumed to be not guilty of the accusations contained
16 in the indictment and the presumption continues throughout
17 the trial and even during the course of your deliberations
18 in the jury room.

19 The presumption of innocence is sufficient to
20 acquit a defendant of a crime charged unless it is
21 overcome by evidence that satisfies your mind beyond a
22 reasonable doubt of the defendant's guilt.

23 Unless you are so satisfied it is your sworn
24 obligation to find the defendant not guilty. If you are so
25 satisfied, it is your sworn obligation to find the defendant

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2 guilty. So the question arises, what is a reasonable doubt.

3 The words suggest the answer. It is a doubt
4 based on reason which arises from the evidence or from the
5 lack of evidence in this trial. It is not caprice or
6 whim or speculation. It is not an excuse to avoid the
7 performance of an unpleasant duty nor is it sympathy for
8 any party.

9 Reasonable doubt is doubt which appeals to your
10 reason, to your judgment, to your common sense and your
11 experience. It is the kind of doubt which would cause
12 prudent men and women to hesitate to act in matters of
13 utmost personal importance to themselves. If after a fair
14 and impartial consideration of all the evidence you have such
15 a doubt as would cause you as prudent persons to hesitate
16 to act in matters of importance to yourselves, then you
17 have a reasonable doubt and it is your duty to acquit.

18 If on the other hand after a fair and impartial
19 consideration of all of the evidence you do not have a
20 doubt such as would cause you to hesitate to act in matters
21 of importance to yourselves, then you have no reasonable
22 doubt and it is your duty to convict.

23 A reasonable doubt does not mean positive cer-
24 tainty beyond all possible doubt. The reason is that it is
25 practically impossible for a person to be absolutely and

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2 completely convinced of any controverted fact which by its
3 nature is not susceptible of mathematical certainty.

4 In consequence, the law is that in a criminal
5 case it is enough if proof that a defendant is guilty is
6 established beyond a reasonable doubt, not beyond all
7 possible doubt. You have heard reference made to perhaps
8 direct evidence and to circumstantial evidence. Let me explain
9 the difference.

10 Direct evidence is where a witness testified to
11 what he saw, heard or observed. What he knows of his own
12 knowledge. Something that comes to him by virtue of his
13 senses. This is direct evidence.

14 Circumstantial evidence is evidence of facts
15 and circumstances from which one may infer connected facts
16 which reasonably follow in the common experience of mankind.
17 Stated somewhat differently, circumstantial evidence is a
18 fact or a series of facts in evidence which have a logical
19 tendency to lead the mind to a conclusion that another
20 fact exists, even though there is no direct evidence
21 to that effect.

22 If you wish, I will give you the example of the
23 rain outside. The sun is shining now. You do not wish
24 that. I see some negative nods. If you wish it, send me
25 a note and I will give that to you too. Circumstantial

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2 evidence if believed is of no less value than direct
3 evidence, for in either case you must be convinced beyond
4 a reasonable doubt of the guilt of the defendant.

5 As you can see, the matter of drawing infer-
6 ences from facts in evidence is not a matter of guesswork
7 or speculation. An inference is a logical factual conclusion
8 which you might reasonably draw from other known facts.
9 Much of your work in the jury room, I believe, will be to
10 marshal the evidence before you and to arrive at certain
11 logical factual conclusions by inference.

12 There are times when different inferences may
13 be drawn from the same facts, whether proved by direct
14 or circumstantial evidence. The government asks you to
15 draw one set of inferences, the defendant asks you to
16 draw another entirely different set of inferences. It is
17 for you and you alone to weigh the evidence and to decide
18 what inferences you will draw from the facts as you find
19 those facts to be in this case.

20 There are a few items in this case that are not
21 evidence and which may not be considered by you. If during
22 the course of the trial a question was asked and an objection
23 was interposed and I sustained the objection, you are to
24 disregard the question and any alleged facts contained in
25 the question.

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2 If there was an answer to the question, you are
3 to disregard the answer. If I ruled that an answer be
4 stricken from the record, you are to disregard the answer
5 and the question in your deliberations. These items are
6 not evidence and therefore cannot be considered by you in
7 any respect. I told you earlier, an indictment is not
8 evidence. It is a method or procedure by which persons
9 accused by grand juries of crimes are brought to trial.
10 Whether the persons accused are guilty or not guilty of the
11 crimes charged is determined by a trial jury such as you are.

12 There has been evidence adduced at this trial that
13 some of the witnesses may have made statements at some
14 prior time. For instance, before the grand jury or at the
15 prior trial of some other persons, and that these state-
16 ments may appear to be inconsistent with the witnesses'
17 testimony at this trial. These earlier statements have
18 been admitted into evidence for the purpose of impeaching,
19 that is to call into question the credibility of the wit-
20 ness.

21 They have not been admitted to establish the
22 truth of what it is asserted in those earlier statements.
23 Such prior statements have been presented here by counsel in
24 an effort to indicate that what the witness has said on
25 trial here may not be reliable because of earlier testimony or

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for any other reason or motive which you may determine from such evidence.

It is for you to decide whether or not these statements are contradictory and, if so, what effect such inconsistency has on the credibility of the witness. As I told you before, you as jurors are the sole judges of the credibility of witnesses and the weight their testimony deserves.

You know that there is no automatic way to tell who is telling the truth and who is not. Credibility can be equated with believability. If a witness is credible, we say that he is believable. You should carefully scrutinize all the testimony offered both on direct, cross examination, redirect, recross, and so forth, with due regard to the circumstances under which each witness has testified. You must consider every matter in evidence which tends to show whether or not that witness is worthy of belief. Consider the witness' ability to observe the matters as to which he or she has testified, whether or not the witness impressed you as having had an accurate recollection of those matters.

When you are judging credibility, it is important that you consider any relation any witness may bear to any part of the case, the manner in which each witness

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2 might be affected by the verdict and any other motive which
3 the witness may have for testifying as he or she has. You
4 should weigh all the evidence and determine the extent to
5 which if at all each witness is either supported or con-
6 tradicted by other evidence in the case.

7 In this case one of the government witnesses has
8 been granted immunity with respect to his testimony here.
9 We call that use immunity. I am referring to Mr. Jaffee.
10 What this means is that although Mr. Jaffee during his
11 testimony here testified to having committed acts for which
12 he might be prosecuted, the government not use his
13 testimony against him in any subsequent criminal proceedings.

14 If the government is to develop evidence to pros-
15 ecute him for these acts it will have to develop its case
16 independent of the witness' testimony here or any evidence
17 that might be derived from it.

18 Further, Jack Glasser has been granted what we
19 call transactional immunity. What this means is that the
20 government cannot prosecute him at all for the acts he has
21 admitted from the witness stand at this trial. The impact
22 of a grant of immunity must be weighed carefully by you
23 and you should scrutinize the testimony of these witnesses
24 with special care.

25 You should seek to determine from all the relevant

2 evidence with respect to this matter whether or not their
3 desire for immunity or the grant of immunity might have
4 contributed to a motive to testify falsely. On the other
5 hand, you should also consider the fact that a witness
6 testifying under immunity faces the same risk of a perjury
7 prosecution should he give false testimony, just as any
8 other witness at this trial, and that the purpose of a
9 grant of immunity is to encourage otherwise reluctant wit-
10 nesses to testify truthfully.

11 It is for you and you alone to assess the motives
12 of the witnesses in this case. You have heard the defend-
13 ant's wife testify in this case. You know, of course, that
14 by virtue of her relationship to the defendant she has some
15 interest in the outcome of the case. In considering her
16 testimony you may properly take that interest into account.

17 Further, you may take into consideration the fact
18 that she has been present in the courtroom during the time
19 the witnesses for the government testified. The ultimate
20 question for you to decide in passing on the credibility of
21 the witness in this trial is did the witness tell the truth
22 to you.

23 It is for you and you alone to say whether his
24 testimony or her testimony at this trial was truthful or
25 truthful, in whole or in part. If you find that any wit-
ness has testified -- withdrawn.

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2 If you find that any witness has willfully test-
3 ified falsely as to any material matter, you may reject the
4 entire testimony of that witness or you may accept such
5 portion of it as you believe to be true.

6 As you are aware, the defendant did not take the
7 stand here. As to this I charge you that the law does not
8 require a defendant in a criminal case to take the
9 witness stand and testify. No presumption of guilt may
10 be raised, no inference of any kind may be drawn from the
11 fact that the defendant did not testify. I instruct you
12 further that there is no presumption against the government
13 from its failure to call a witness when it appears that his
14 or her testimony would be merely cumulative and repetitious
15 and of no greater value than that of witnesses who have
16 already testified.

17 And, of course, you recall that there is no
18 obligation on the defendant to call any witnesses at all.
19 I should note that there has been some testimony in this
20 trial related to the defendant's reputation in the community
21 for honesty, truthfulness and integrity. You should con-
22 sider that evidence, together with all the other evidence,
23 in determining the defendant's guilty, that is whether the
24 defendant is guilty or not guilty. Evidence of good rep-
25 utation, if accepted, may in itself create a reasonable

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2 doubt where without such evidence no reasonable doubt would
3 exist. But if from all the evidence you are satisfied
4 beyond a reasonable doubt that the defendant is guilty,
5 a showing that he previously enjoyed the reputation of good
6 character does not justify or excuse the offense. You
7 should not acquit him merely because you believe he has
8 been a person of good reputation.

9 This completes my general instructions with
10 regard to what your functions and duty is and with regard
11 to what you may or may not consider in your deliberations.

12 Let me turn to a discussion of the specific
13 charges against the defendant and instruct you as to what
14 essential elements the government must prove beyond a
15 reasonable doubt in order to sustain the charges against
16 the defendant.

17 The charges in this indictment are set forth in
18 three separate counts. Each of the counts charges a sep-
19 arate crime and they must each be considered separately.
20 The fact that you may find the defendant guilty or not
21 guilty of one of the offenses charged should not control your
22 verdict with respect to any other offense charged.

23 Each of counts 1 through 3 charges a violation
24 of the Federal Labor-Management Relations Act also known
25 as the Taft-Hartley Act and is based on alleged specific

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2 payments of money by Karl Jack Schwartzbaum through
3 Jack Glasser to one Charles Hoff. Each count of the indict-
4 ment charges the defendant with violating section 136A of
5 Title 29 of the United States Code which is a part of the
6 Taft-Hartley Act. The pertinent provisions of the
7 statute read as follows:

8 "It shall be unlawful for any employer or association
9 of employers, or any person who acts in the interest of
10 an employer, to pay, lend or deliver or agree to pay, lend
11 or deliver any money or other thing of value to any rep-
12 resentative of any of his employees or to any labor or
13 organization or any officer or employee thereof, which
14 represents, seeks to represent or would admit to membership
15 any of the employees of such employer who are employed
16 in an industry affecting commerce."

17 I won't read the indictment to you since you have
18 that in the jury room. Before you may find the defendant
19 guilty of any one of the counts charged in the indictment,
20 you must find that the government has proved beyond a
21 reasonable doubt each and every one of the following ele-
22 ments:

23 One. That on or about the date alleged Karl
24 Jack Schwartzbaum made a payment of money indirectly
25 through Jack Glasser, which was received and accepted by

1 the 19

2 Charles Hoff.

3 Two. That on or about the date alleged Karl
4 Jack Schwartzbaum was a manufacturer employing union
5 labor. That is, individuals who were members of the Furriers
6 Joint Council of New York.

7 Three. That on or about the date alleged, Charles
8 Hoff was an officer or employee of the Furriers Joint Council
9 of New York.

10 Four. That the fur products manufacturing industry
11 is an industry affecting commerce. And, five, that Karl
12 Jack Schwartzbaum acted willfully and knowingly. With res-
13 spect to each count of the indictment, I instruct you that
14 if you find beyond a reasonable doubt that the payment
15 specified in that count was made and delivered by the
16 defendant to Jack Glasser and was received and accepted by
17 Charles Hoff as alleged, then you may find that the
18 first element of the crime has been proved.

19 I think you should bear in mind that the gov-
20 ernment's burden is to prove as to each of the three
21 counts of the indictment that the defendant did in fact
22 make the payment to Glasser and that Glasser did in fact
23 turn over a portion of the payment to Charles Hoff.

24 If you find only that the defendant paid Glasser
25 but that Glasser never delivered that payment to Hoff, then

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2 the government has not met its burden with respect to this
3 element. Moreover, if you find that Glasser gave money to
4 Mr. Hoff but that the government has failed to establish
5 that the money came from the defendant, then the govern-
6 ment has not met its burden with respect to that count.

7 But if you find beyond a reasonable doubt that
8 the payments specified in each of the counts in question were
9 made and delivered and received and accepted as the govern-
10 ment's witnesses have testified here, then you may find that
11 this element has been established.

12 In order to find that a crime has been com-
13 mitted on each of the counts, that is counts 1 through 3, you
14 must also find that Karl Jack Schwartzbaum was a fur indus-
15 try manufacturer employing union labor.

16 It appears that this fact is undisputed. The
17 government must also prove that Charles Hoff was a rep-
18 resentative of at least some of the defendant's employees.
19 It appears that this fact is undisputed and that Charles
20 Hoff was an officer or employee of the Furriers Joint Council
21 of New York and that some employees of the defendant's firm
22 were members of that union. With regard to the require-
23 ment that the government prove that the fur products manu-
24 facturing industry is an industry affecting commerce, this
25 fact is undisputed.

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I didn't mention it this morning, but it is also undisputed that the acts charged, if they occurred, occurred within the Southern District of New York. You will note that the acts charged in the indictment are alleged to have been done unlawfully. Unlawfully means contrary to law.

Hence, to do an act unlawfully means to willfully do something which is contrary to law. On the other hand, the statute involved here does not require a conscious wrongdoing. Rather, it is a legal prohibition which outlaws all payments between employers and union representatives with stated exceptions not relevant here.

Thus the final element the government is required to prove in connection with counts 1 through 3 is that the defendant acted willfully and knowingly. In this context conduct that is done willfully and knowingly is conduct that is done deliberately and voluntarily. It is not conduct resulting from inadvertence, mistake or accident. The government need not prove, however, that the defendant knew about the Taft-Hartley Act or acted with a specific purpose to violate that statute. In the context of this case you may find that Earl Jack Schwartzbaum acted knowingly and willfully, if you find beyond a reasonable doubt that he made payments of money to Jack Glasser intending that

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2 at least a portion of those monies be conveyed by Jack
3 Glasser to one or more union officers or employees. Put
4 another way, you may find this element of the offense satis-
5 fied if you find beyond a reasonable doubt that the
6 defendant made payments of money to Jack Glasser, expecting
7 or contemplating -- expecting or contemplating -- that
8 Jack Glasser would transmit at least a portion of those
9 monies to one or more union officials or employees.

10 To convict, however, you need not find that the
11 defendant knew or learned of the identity of the union
12 official whom the government contends Jack Glasser paid or
13 of the precise amount allegedly transmitted to him. Just to
14 make sure you understand this, let me recapitulate.

15 In order to find the defendant guilty of any of
16 the three counts with which he is charged, you must first
17 find beyond a reasonable doubt that the defendant made the
18 payment alleged in that count to Jack Glasser, and, further,
19 that Glasser turned over part of that payment to Charles Hoff
20 as alleged in the indictment. This is required by the first
21 element of the offense as I have discussed it. You must
22 also find beyond a reasonable doubt that the payment made
23 in that particular count was made knowingly and willfully
24 by the defendant.

25 Under this element, you need not find that the

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2 defendant knew the actual identity of the union official
3 or employee who received the payment. It suffices if you
4 find beyond a reasonable doubt that the payment was made by
5 the defendant to Glasser, intending or contemplating that
6 Glasser would turn over part of the monies to a union
7 official or employee. You will recall that during the trial
8 the government introduced testimony both through Glasser and
9 Jaffee of payments of money to Jaffee from the defendant
10 Schwartzbaum through Jack Glasser. I also permitted the
11 government to elicit evidence concerning payments allegedly
12 made by the defendant prior to 1969.

13 You are reminded that the charges made against the
14 defendant in the indictment here involved alleged payments
15 to a Charles Hoff made during the year 1969. The def-
16 endant is on trial only for the acts alleged in the indict-
17 ment.

18 Therefore, while you may consider the testimony
19 concerning payments other than those alleged in the indict-
20 ment, you may only consider that as possibly evidencing --
21 and this is for your determination -- a general pattern or
22 course of conduct on the part of the defendant which may
23 serve to prove the necessary intent or knowledge with
24 respect to the offense charged. That's a determination
25 which you have to pass upon.

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These then are the elements of the crimes charged in counts 1 through 3 of the indictment. Before you can find the defendant guilty of any charge you must find each and every element for that particular count proved beyond a reasonable doubt. If you find that the evidence with respect to any one of the elements needed to prove the offense as charged leaves a reasonable doubt, then it is your duty to find the defendant not guilty of the crime charged in that count.

You are not to consider or speculate about the punishment which the defendant may receive if found guilty. It is the function of the jury to deliberate and determine whether a defendant is guilty or not guilty on the basis of the evidence and the Court's instruction. It is the function of the judge to determine the disposition of the defendant's case after that.

Now, the most important part of the case, of course, is the part that you play in deciding whether the defendant is guilty or not guilty and, of course, you must do so in accordance with the oath which you took. In that oath you promised that you would well and truly try the issues joined in the case and a true verdict rendered. If you follow that oath, try the issues without confusing your thinking of the issues with emotion,

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2 you will arrive at a just verdict. As you deliberate, you
3 must be careful to listen to the opinion of other jurors
4 as well as to ask for an opportunity to express your own
5 views.

6 No one juror holds the center of the stage in the
7 jury room. No one juror controls or monopolizes deliber-
8 ations. You must all express your views and exchange views.
9 If you become convinced that your original view was wrong
10 with respect to any matter, don't be afraid to change your
11 vote because of pride in your original opinion or in
12 reaction to the stubbornness of the other person.

13 On the other hand, do not surrender your honest
14 belief solely because of the opinion of your fellow
15 jurors or because you are outnumbered. You understand that
16 in a criminal case in this court, your verdict must be
17 unanimous.

18 That is, it must be joined in by each and every
19 one of you, whether it is guilty or not guilty. The form of
20 the verdict should be either guilty or not guilty on each
21 count of the indictment that is before you. During your
22 deliberations you can, of course, send for any exhibits
23 in evidence, you can request that any testimony be read
24 back, you can request any portion of this charge be read
25 to you again. You know that a copy of the indictment which

1 the
2 you have already received in the jury room is not evidence,
3 and, of course, you must not reveal the standing of the
4 jurors at any time during your deliberations, that is you
5 are not to indicate the count of any split vote on the ver-
6 dict to anybody, including the Court.

7 Okay.

8 (Jury resumed deliberations at 3:40 p.m.)

9 (In open court - without the presence of the Court
10 or jury.)

11 MR. PRYIAN: I want to note for the record that
12 the following -- that copies of the following materials
13 were given to Mr. Esbitt, counsel for defendant Schwartzbaum,
14 on March 28 and March 29: Government Exhibit 3502 for
15 identification, transcript of grand jury testimony of Jack
16 Glasser on June 6, 1972. Government Exhibit 3503 for iden-
17 tification, grand jury testimony or transcript of grand jury
18 testimony of Jack Glasser on April 27, 1972.

19 Government Exhibit 3503A for identification,
20 Glasser immunity order dated April 27, 1972, and supporting
21 affidavit and affidavit.

22 Government Exhibit 3504 for identification,
23 11 pages of handwritten notes by Jack Glasser which are
24 not dated. Government Exhibit 3504A for identification, two
25 pages of handwritten notes by Jack Glasser which are not

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2 dated.

3 Government Exhibit 3504B for identification, one
4 page of handwritten notes by Jack Glasser which are not
5 dated and which were originally a part of the group of pages
6 included in Government Exhibit 3504 for identification.

7 Government Exhibit 3505 for identification, five pages of
8 undated notes by Mr. Hinckley.

9 Government Exhibit 3506 for identification, report
10 of interview dated April 5, 1972 prepared by Paul Civitano.

11 Government's Exhibit 3507 for identification, report of inter-
12 view dated March 7, 1972, prepared by Paul Civitano.

13 Government Exhibit 3508 for identification, six
14 pages of handwritten notes dated April 6, 1972, prepared by

15 Mr. Duke. Government Exhibit 3509A for identification,
16 five pages of handwritten notes prepared by Mr. Sabetta,
17 which notes are undated.

18 Government Exhibit 3511 for identification, mem-
19 orandum dated March 26, 1974, prepared by V. W. Fryman, Jr.,
20 concerning an interview with Jack Glasser.

21 The materials described above all relate to the
22 witness Glasser. In addition, with respect to the witness
23 Chambers, the following was given to Mr. Esbitt: Govern-
24 ment Exhibit 3509 for identification, handwritten notes dated
25 March 19, 1971, prepared by V. W. Fryman, Jr. Further,

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2 with respect to the testimony -- with respect to the witness
3 Rittman, a copy of the following was provided to Mr. Esbitt.
4 Government Exhibit 3510 for identification, handwritten
5 notes dated March 27, 1974, prepared by V. T. Fryman, Jr.

6 (In open court - 5:15 p.m., jury present.)

7 THE CLERK: Ladies and gentlemen of the jury,
8 please answer to your presence as your name is called.

9 (All jurors present.)

10 THE CLERK: Madam Forelady, has the jury agreed
11 upon a verdict?

12 THE FORELADY: We have.

13 THE CLERK: What is your verdict on count 1?

14 THE FORELADY: Guilty.

15 THE CLERK: What is your verdict on count 2?

16 THE FORELADY: Guilty.

17 THE CLERK: What is your verdict on count 3?

18 THE FORELADY: Guilty.

19 THE CLERK: Ladies and gentlemen of the jury,
20 listen to your verdict as it now stands recorded. You say
21 yes, find the defendant guilty on each of counts 1, 2 and 3,
22 and so say you all.

23 MR. ESBITT: May we have the jury polled, your
24 Honor?

25 THE COURT: Poll the jury.

1 THE

2 THE CLERK: Ladies and gentlemen of the jury,
3 listen to your verdict as it now stands recorded. You say
4 you find the defendant guilty on count 1, guilty on count
5 2 and guilty on count 3.

6 Mary Collins, is that your verdict?

7 (All jurors were asked the same question and all
8 jurors answered "Yes.")

9 THE COURT: Madam Forelady, ladies and gentlemen
10 of the jury, you have performed your function in this case.
11 We thank you for your service.

12 Mr. Clerk, do you have any further instructions?

13 THE CLERK: They are to return Monday morning at
14 9:10, Room 100.

15 (Jury excused.)

16 THE COURT: Mr. Esbitt, do you wish to be heard
17 at this time?

18 Mr. ESBITT: I would like, if your Honor please,
19 some time to make appropriate motions. I don't know what
20 day your Honor will set for sentence, but I would like
21 probably the same day for motions.

22 THE COURT: The case is set down for sentence on
23 May 6 at 4:30 p.m., this courtroom. A pre-sentence report
24 is requested. Counsel is requested to arrange for his
25 client to meet with the probation people so that that might

1 He
2 be gotten out of the way.

3 MR. ESBITT: May I request that the defendant who
4 has been released in his own recognizance, that that be
5 continued pending appeal?

6 THE COURT: Any objection?

7 MR. FRYMAN: That is acceptable to the gov-
8 ernment, your Honor.

9 THE COURT: So ordered. Thank you both.

10 (Court adjourned.)

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COPY RECEIVED
AUG 12 1974
PAUL J. CURRAN
U.S. ATTORNEY
SO. DIST. OF N.Y.

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